SEPTEMBER 2026

Who Really Pays?

The Consumer Cost of Climate Litigation and "Climate Superfund" Legislation in the United States

An assessment of more than 300 pending legal actions, three enacted state statutes, twelve state legislative proposals, and one federal bill, and what they would cost American households if every one of them succeeded.

$1,465

PER HOUSEHOLD · PER YEAR

Range: **$1,248–$2,111** annually
≈ 41 cents per gallon of motor fuel
≈ 1.5 cents per kWh of electricity

AUTHORS

E.J. Antoni · Daniel Turner

UNLEASH PROSPERITY | POWER THE FUTURE

Contents

E.J. Antoni

AUTHOR

Daniel Turner

AUTHOR

Executive Summary

Across the United States, a coordinated legal and legislative campaign seeks to transfer the cost of climate adaptation onto the companies that produce, refine, and deliver energy. The campaign operates through three instruments: common-law tort suits brought by states, counties, and municipalities; "climate superfund" statutes that impose retroactive strict liability by legislation; and a federal bill that would have similar effects nationally through the tax code.

Each instrument is presented to the public as a charge on corporations rather than on consumers. That framing does not survive contact with basic economics, as is often illustrated by tax incidence showing the difference between who is taxed de jure and de facto. Energy companies are not terminal repositories of cost; they are intermediaries between resource and ratepayer. A cost imposed at the wellhead, the refinery, or the generating station moves downstream to the pump, the meter, and the grocery store shelf. The only serious questions are how much and how quickly that percentage of the imposed costs will be passed on.

What we examined

This paper analyzes nearly 400 catalogued legal actions (more than 300 are distinct legal controversies) filed between 2024 and 2026, and a compilation of climate superfund statutes and bills across sixteen states plus federal legislation, supplemented by Maryland's RENEW Act. Where a state has filed successive versions of the same superfund bill, only the most recent version is carried into the quantitative estimates; superseded versions are discussed in the text but excluded from the arithmetic to avoid double counting.

What it would cost

If every pending superfund statute were enacted and enforced, every climate-damages suit succeeded on the terms pleaded, and the federal Polluters Pay Climate Fund Act became law, the recurring burden on the American energy system would likely fall in the following range:

TABLE 1

Estimated annual consumer burden, full-success scenario

COMPONENT	LOW	CENTRAL	HIGH
State climate superfund programs (15 states)	$13.8B	$26.8B	$45.2B
Climate-damages litigation judgments and abatement funds	$30.0B	$42.0B	$98.0B
Federal Polluters Pay Climate Fund Act (S.25 / H.R.1135)	$100.0B	$100.0B	$100.0B
Defense, compliance, and capital risk premium	$21.6B	$25.3B	$36.5B
Total annual burden	**$165B**	**$194B**	**$280B**
Per household, per year	**$1,248**	**$1,465**	**$2,111**
Per household, cumulative over 10 years	$12,481	$14,651	$21,108

Sources: author's calculations from statutory text, pleadings, EIA State Energy Data System, EIA 2024 Residential Energy Consumption Survey (132.5 million U.S. households), and NOAA NCEI billion-dollar disaster data. Full methodology at Section 5 and Appendix B.

LOW

$1,248

per household, per year · $165B total

CENTRAL

$1,465

per household, per year · $194B total

HIGH

$2,111

per household, per year · $280B total

The inclusion of Maryland's RENEW Act actually lowers the central estimate by roughly $40 per household annually, despite adding $9 billion in direct assessment. The reason is instructive. Eleven of the fifteen state programs leave the assessment total to a study, so their magnitude must be inferred from the states that named a figure. New York and Massachusetts chose $75 billion; New Jersey chose $50 billion. Maryland chose $9 billion — an implied $58 per resident per year against New York's $151 and Massachusetts's $420. Adding that fourth data point pulls the benchmark median down from $263 to $207 per resident, which reduces the imputed totals for the eleven study-determined states by more than Maryland's own $9 billion adds.

The lesson is not that the estimate is unstable. It is that legislatures asked to name a number have named wildly different ones—a factor of seven apart per capita—for programs with materially identical design. That dispersion is itself evidence that these totals are not derived from any disciplined assessment of damages.

The central estimate of $194 billion annually represents roughly 11.4 percent of total U.S. end-use energy expenditures. Translated into prices a household actually sees, the central case implies approximately 41 cents per gallon of motor fuel and 1.5 cents per kilowatt-hour of electricity—a roughly 8.6 percent increase on a 17-cent residential rate. The high case assumes the recent pattern of dismissals reverses while the low case assumes more dismissals. Section 6 treats separately the scenario in which courts anchor damages on attribution modeling rather than documented losses, which produces figures several times larger.

A NOTE ON THE CURRENT LEGAL POSTURE

Exposure, not expected outcome.

On August 31, 2026, the U.S. District Court for the Northern District of New York held New York's Climate Change Superfund Act preempted by the Clean Air Act in *West Virginia v. James*, blocking the state's $75 billion cost-recovery program. On October 5, 2026, the Supreme Court hears argument in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170, the first case of its October Term, which will address whether federal law precludes state-law claims for injuries from interstate and international greenhouse gas emissions.

The estimates in this paper are therefore a measure of exposure, not of expected outcome. They answer the question the sponsors of these measures have themselves invited if they get their desired outcome: what happens if this campaign succeeds? Vermont's statute remains in litigation, appeals are expected in New York, and the legislative proposals are re-filed each session. The exposure does not disappear because one district court ruled one way in one jurisdiction or because one state legislative session ended.

Principal conclusions

1 **The costs are not absorbed by shareholders alone.** The claim that retroactive assessments are "fixed costs" that cannot affect prices rests on an erroneous static model. Firms price against expected future liability, not merely past outlays; a demonstrated willingness by legislatures to reach backward raises the risk premium on every forward-looking investment decision. To the extent costs do land on equity, they land on pension funds, 401(k) accounts, and state retirement systems—that is, on teachers, firefighters, and municipal employees.

2 **The burden is regressive.** Energy is a necessity with low short-run demand elasticity. Low-income households already carry an energy burden of approximately 9.1 percent of income, against 2.4 percent for all other households. A flat increase in energy prices takes a disproportionate share of the budgets of those least able to absorb it.

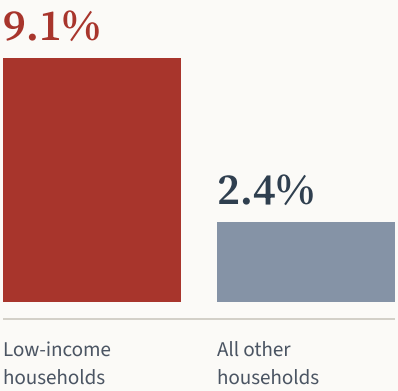
3 **The timing compounds an existing affordability problem.** U.S. retail electricity revenue per kilowatt-hour rose 7.1 percent in 2025 and a further 9.0 percent year-over-year in February 2026. Investor-owned utilities requested $22 billion in rate increases in 2025 and $18.6 billion in the first half of 2026 alone, against a 2011–2016 average near $7 billion. These measures would exacerbate existing increases.

4 **The mechanism bypasses democratic accountability.** A former counsel in the Boulder litigation has described the strategy as functioning like an indirect carbon tax. Whatever one thinks of carbon pricing on the merits, a carbon tax enacted by a legislature is visible, debatable, and revisable. One assembled from tort judgments in favorable venues is none of those things.

5 **Some courts have so far been skeptical but that does not eliminate all costs.** Claims have been dismissed in Maryland, Delaware, New Jersey, New York, Pennsylvania, South Carolina, and Puerto Rico, and the Maryland Supreme Court rejected three suits on both federal and state grounds in March 2026. Colorado and Hawaii went the other way, producing the split now before the Supreme Court. But defense costs, reserving obligations, disclosure burdens, and the capital risk premium accrue whether or not a plaintiff ultimately prevails. A defendant does not get that money back.

6 **The same legal machinery obstructs nuclear power.** The environmental-review and intervention practices used against pipelines and generating stations are used with equal force against reactors. Historically, NRC environmental impact statements have taken three to five years to complete. A policy framework serious about both affordability and emissions would reduce litigation risk across the entire dispatchable portfolio—gas, coal, and nuclear alike.

ENERGY BURDEN, SHARE OF INCOME



Source: National Energy Assistance Directors Association (Section 7.3).

ELECTRICITY PRICES ALREADY RISING

+7.1%
retail revenue per kWh, 2025

+9.0%
year-over-year, Feb. 2026

Section 9 sets out the constructive alternative: a domestic energy portfolio built on affordable hydrocarbons and an expanded nuclear fleet, supported by permitting and liability reform that applies evenly across generation technologies.

1 The Landscape

1.1 Origin and trajectory

The modern anti-energy campaign dates to 2017, when the cities of Oakland and San Francisco brought public nuisance claims against five major energy producers, seeking to compel them to fund a climate adaptation program. The theory was novel: that the lawful production and sale of a lawful product, combined with alleged public messaging about that product, gave rise to tort liability for the cumulative global consequences of its use by billions of third parties.

Nearly a decade of procedural litigation followed. Most of it concerned forum rather than merits—whether these disputes belong in state or federal court. District courts, circuit courts, and the Supreme Court have repeatedly remanded cases and, in several instances, confirmed state and municipal authority to bring claims under state law. The Second Circuit reached the opposite conclusion on the merits in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), holding that New York City could not pursue state-law damages claims against producers for harms attributed to global emissions. That decision has since become the anchor for challenges to the superfund statutes.

By early 2026, more than thirty climate-damages actions brought by states, counties, and cities were pending nationwide. Most seek money damages under state tort or consumer-protection law rather than emissions regulation as such. In parallel, the strategy expanded from the courtroom into the statehouse: if a common-law theory is uncertain, a legislature can simply enact the liability directly.

1.2 Three instruments, one objective

Tort litigation. States, counties, municipalities, tribes, and private class plaintiffs assert public nuisance, trespass, failure to warn, negligent design, civil conspiracy, unjust enrichment, product liability, consumer protection, and, increasingly, antitrust and RICO claims. Relief sought includes compensatory damages, punitive damages, treble damages, disgorgement of profits, abatement funds, and attorney's fees. Most complaints do not plead a specific dollar figure but are instead open-ended.

Climate superfund statutes. Modeled on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), these laws impose strict liability—expressly "without regard to fault"—on companies that extracted or refined fossil fuels during a defined lookback window and are determined to be responsible for emissions above a threshold, typically one billion metric tons. A state agency apportions a predetermined or study-determined total among covered parties and issues cost-recovery demands.

Federal legislation. The Polluters Pay Climate Fund Act of 2025 (S.25, introduced by Sen. Van Hollen with Sens. Sanders, Merkley, Markey, and Warren; H.R.1135, introduced by Rep. Nadler with Rep. Chu) would impose a national assessment on the largest domestic extractors and refiners, and on foreign-owned companies doing business in the United States, to capitalize a $1 trillion fund over ten years. Contributions would be apportioned by share of global emissions and administered through Treasury and EPA.

The instruments differ in form but much less so in effect. Each identifies a small set of upstream suppliers, assigns them a share of an aggregate damages figure derived from attribution modeling, and collects. Each applies retroactively to conduct that was lawful—and in most cases actively encouraged by federal and state policy—at the time it occurred.

2017
Oakland and San Francisco bring the first public nuisance claims

2021
Second Circuit rejects New York City's state-law damages claims

30+
climate-damages actions pending nationwide by early 2026

THREE INSTRUMENTS, ONE PATHWAY

LAW / LIABILITY

Courtroom, statehouse, Congress

Tort suits · climate superfund statutes · Polluters Pay Climate Fund Act. Each assigns upstream suppliers a share of an aggregate damages figure and collects.

→

ENERGY SYSTEM

Wellhead, refinery, generating station

Energy companies are intermediaries between resource and ratepayer, not terminal repositories of cost.

→

CONSUMER

Pump, meter, grocery shelf

The only serious questions are how much and how quickly the imposed cost is passed on.

Derived from Sections 1.2 and the Executive Summary.

1.3 Data treatment

Two basics adjustments were made to the record of the last several years so that it could support quantitative estimates.

Deduplication. About one-fifth of identified disputes actually share underlying controversies, such as 14 challenges to the rule repealing the Affordable Clean Energy rule eight challenges to the rescission of the 2009 endangerment finding, eight challenges to the SEC climate-disclosure rule, seven greenwashing class actions against a single consumer-products manufacturer, etc. Double counting would overstate the litigation burden by roughly one-fifth so each topic is covered only once and duplicates are ignored for the quantitative estimates.

Superseded legislation. Several states have filed and re-filed superfund bills across sessions, materially revising the mechanism each time. Only the most recent version of each state's proposal enters the quantitative estimates. Superseded versions are discussed in Section 3 because the pattern of revision is itself informative, but they are excluded from the arithmetic.

DEDUPLICATING THE LEGAL INVENTORY

395 catalogued observations

311 distinct disputes after deduplication

311 distinct disputes — 84 duplicates

Counting observations rather than controversies would overstate the number of distinct legal controversies by approximately **21 percent**. All figures in this paper use the deduplicated count.

Source: Appendix A.

WHAT IS NOT COUNTED

Some of the catalogued actions are not cost-imposing on energy providers at all but instead would prevent cost reductions. Many are challenges brought by environmental organizations against federal deregulatory actions, others are Endangered Species Act listing petitions, Freedom of Information Act suits, offshore wind developers contesting stop-work orders, or industry suits against state regulation. The quantitative estimates in Section 5 do not include these but instead are built from the damages actions, the superfund statutes, and the federal bill. The broader inventory is still noteworthy for establishing the scale of the legal apparatus now trained on the energy sector, and because defense costs accrue across all of it.

2 Inventory: Climate Damages Litigation

2.1 The first wave, 2018–2023

Among the first round of legal actions, the largest is in California. In September 2023, Attorney General Bonta filed *People ex rel. Bonta v. Exxon Mobil Corp.* in San Francisco County Superior Court against the five largest producers—Exxon Mobil, Shell, Chevron, ConocoPhillips, and BP—together with the American Petroleum Institute. The complaint seeks nuisance abatement through a fund to finance climate mitigation and adaptation, injunctive relief, damages, and civil penalties. In June 2024 the state amended the complaint to add a disgorgement remedy newly created by Assembly Bill 1366, which would require defendants to surrender profits obtained through the alleged conduct. California is the largest state economy in the country and among the largest economies in the world so this single piece of litigation has an outsized impact compared to the first state AG filing in Rhode Island.

TABLE 2

State attorney general climate actions filed before 2024

STATE	FILED	PRINCIPAL THEORY	NOTE
Rhode Island	2018	Public nuisance, failure to warn, trespass	First state AG filing
Massachusetts	2019	Consumer protection, securities fraud	Past motion to dismiss; in discovery
Minnesota	2020	Consumer fraud, failure to warn	Advancing toward discovery
Connecticut	2020	Unfair Trade Practices Act	Exxon Mobil sole defendant
Delaware	2020	Consumer Fraud Act, nuisance, trespass	31 defendants; largely dismissed
District of Columbia	2020	Consumer Protection Procedures Act	Advancing toward discovery
Vermont	2021	Consumer protection	Advancing toward discovery
New Jersey	2022	Nuisance, fraud, failure to warn	Dismissed
California	2023	Nuisance abatement fund, disgorgement (AB 1366), penalties	Largest plaintiff economy

Municipal, county, and tribal plaintiffs from the same period—including Baltimore, Charleston, Hoboken, King County, Maui, Honolulu, Boulder, and several California coastal jurisdictions—are not itemized here. Section 8.5 addresses which of these claims have since been dismissed.

9
state attorney general actions filed before 2024

2018
Rhode Island, the first state AG filing

2023
California, the largest plaintiff economy, adds a disgorgement remedy in 2024

2.2 The 2024–2026 filings

The following more recent actions seek monetary relief from energy producers for climate-attributed harms. Only one pleads a specific dollar figure.

TABLE 3

Principal climate-damages actions filed 2024–2026

ACTION	FORUM	RELIEF SOUGHT	POSTURE
County of Multnomah v. Exxon Mobil Corp.	Or. state court	**$51.5B abatement fund; $50M actual; $1.5B future damages**	Discovery / pretrial
Bd. of Cty. Comm'rs of Boulder Cty. v. Suncor	U.S. Supreme Court	Compensatory, nuisance, trespass, unjust enrichment	Argued Oct. 5, 2026
State of Hawai'i v. BP p.l.c.	Haw. Cir. Ct.	Damages, UDAP, strict liability, punitive	Stay denied
People of the State of Michigan v. BP p.l.c.	W.D. Mich.	Disgorgement of all profits; antitrust treble damages	Motion to dismiss
City & County of Honolulu v. Sunoco LP	Haw. state court	Abatement, compensatory, punitive	Pending
Minnesota v. American Petroleum Institute	Minn. state court	Consumer protection, restitution, civil penalties	Pending
City of Chicago v. BP p.l.c.	N.D. Ill. / remanded	Nuisance, conspiracy, unjust enrichment, municipal code	Remand granted
State of Maine v. BP p.l.c.	Me. state court	Abatement, damages, fees	Pending
Bucks County v. BP America Inc.	Pa. Commw. Ct.	Nuisance, negligence, trespass, failure to warn	On appeal
Municipality of San Juan / Bayamón v. Exxon	1st Cir.	RICO, Sherman Act, nuisance, strict liability	Appeal briefed
Shoalwater Bay & Makah Tribes v. Exxon Mobil	W.D. Wash. / remanded	Product liability, public nuisance	Remand granted
Kennedy v. Exxon Mobil Corp. (class action)	W.D. Wash.	RICO, conspiracy, unjust enrichment — insurance premiums	Complaint filed
Leon v. Exxon Mobil Corp. (wrongful death)	Wash. Super. Ct.	Product liability, survival action	Dismissal denied
City of New York v. Exxon Mobil Corp.	N.Y. App. Div.	Consumer protection law	Appeal briefed
Herold v. Chevron Corp.	N.D. Cal.	Cartwright Act, Sherman Act, unfair competition	Complaint filed

Of the fifteen actions listed, only County of Multnomah v. Exxon Mobil Corp. pleads a specific dollar figure. Postures as of September 2026; pending matters are unresolved.

1 of 15
actions listed above pleads a specific dollar figure

$51.5B
abatement fund sought by Multnomah County

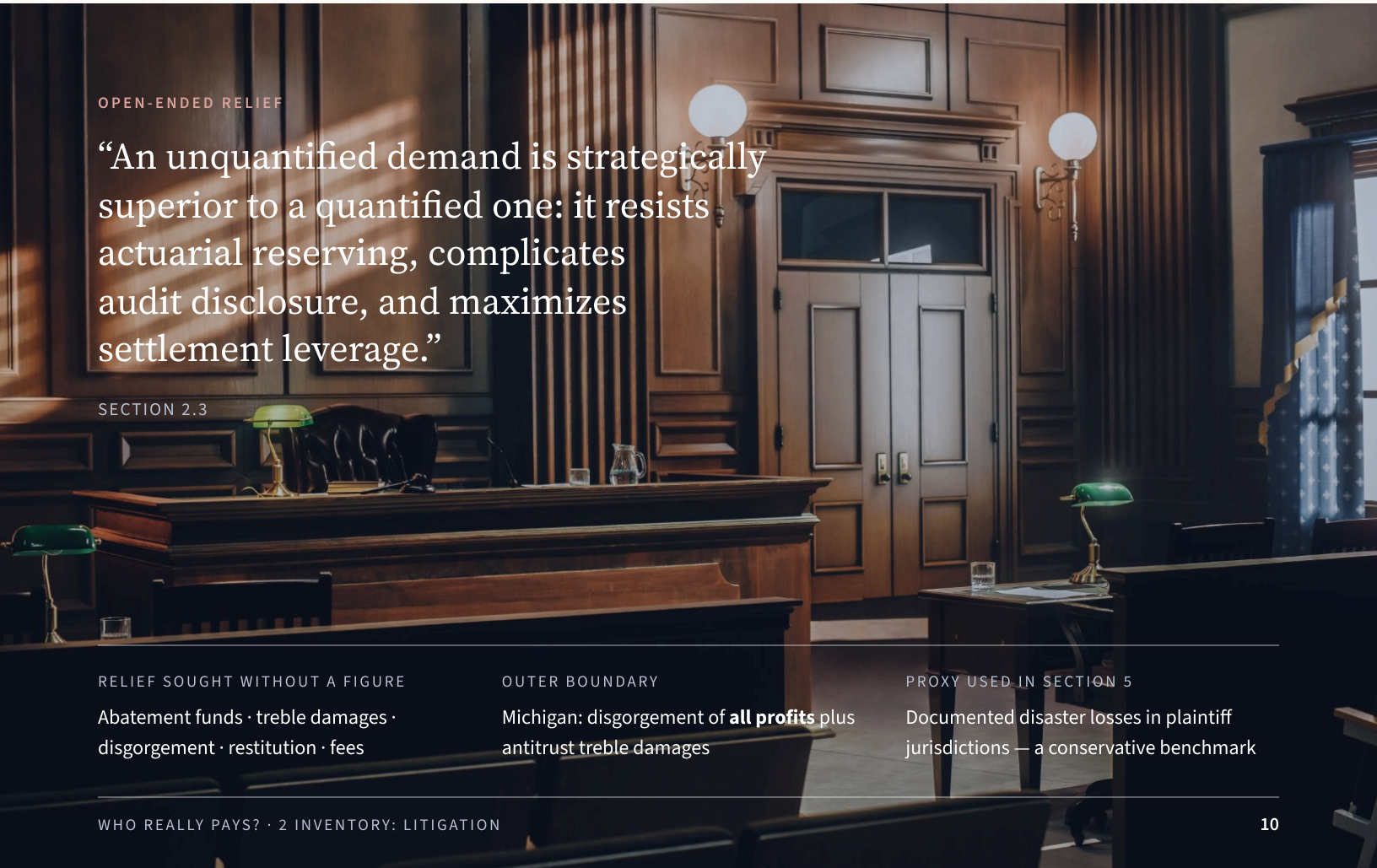
815,000
approximate residents of Multnomah County

2.3 Why the absence of dollar figures is significant

Most of these complaints seek abatement funds, treble damages, disgorgement, and fees without quantifying the demand. This is not an oversight. An unquantified demand is strategically superior to a quantified one: it resists actuarial reserving, complicates audit disclosure, and maximizes settlement leverage. It also makes the aggregate exposure genuinely unknowable in advance—which is itself a cost, because the cost of capital prices in uncertainty.

The Michigan antitrust action illustrates the outer boundary. Filed by the state attorney general in 2026, it alleges a conspiracy to delay the transition away from fossil fuels and seeks disgorgement of all profits, together with the treble damages available under the Sherman and Clayton Acts and the Michigan Antitrust Reform Act. Read literally, "all profits" from participation in the fossil fuel value chain over the relevant period would liquidate the firms in question. The Institute for Legal Reform made the same observation about proposed New York legislation that would authorize disgorgement of profits obtained through an undefined "violation," noting that taken literally the provision would destroy most companies that ever meaningfully participated in the industry.

For the estimates in Section 5, we do not use these maximal readings. Rather, we use documented disaster losses in plaintiff jurisdictions as a conservative proxy for what successful plaintiffs would recover—an approach that almost certainly understates the demand, since Multnomah County alone seeks $51.5 billion against roughly 815,000 residents.



OPEN-ENDED RELIEF

“An unquantified demand is strategically superior to a quantified one: it resists actuarial reserving, complicates audit disclosure, and maximizes settlement leverage.”

SECTION 2.3

RELIEF SOUGHT WITHOUT A FIGURE

Abatement funds · treble damages · disgorgement · restitution · fees

OUTER BOUNDARY

Michigan: disgorgement of **all profits** plus antitrust treble damages

PROXY USED IN SECTION 5

Documented disaster losses in plaintiff jurisdictions — a conservative benchmark

3 Inventory: Climate Superfund Legislation

3.1 Enacted statutes

Vermont. Act 122 of 2024, as amended by Act 47 of 2025 (10 V.S.A. ch. 24A), was the first climate superfund law in the country. It became law without the governor's signature. The statute directs the State Treasurer to assess the cost to Vermont of greenhouse gas emissions from 1995 through 2024, after which the Agency of Natural Resources issues cost-recovery demands to companies responsible for more than one billion metric tons of global emissions with a physical or economic connection to the state. Critically, the statute sets no cap—the total is whatever the Treasurer's report concludes. That report is due in January 2027. The U.S. Chamber of Commerce and the American Petroleum Institute sued in December 2024; twenty-four state attorneys general intervened in May 2025; the Department of Justice filed a separate challenge the same month. The litigation remains pending.

New York. The Climate Change Superfund Act (S.2129B), signed December 26, 2024, established a Climate Change Adaptation Cost Recovery Program to collect $75 billion—$3 billion annually over twenty-five years—from companies that extracted or refined fossil fuels between 2000 and 2024 and were identified as responsible for more than one billion tons of emissions. Liability was strict and proportional. On August 31, 2026, Chief Judge Brenda K. Sannes of the Northern District of New York granted summary judgment against the state in *West Virginia v. James*, holding the Act preempted by the Clean Air Act under *City of New York v. Chevron Corp.*, and separately holding that cost-recovery demands against foreign producers would be barred by the foreign affairs doctrine. The court found that EPA's 2026 rescission of the endangerment finding did not alter the preemption analysis. An appeal is expected.

Maryland. Maryland's path differs from every other state and is worth setting out carefully. The RENEW Act (Responding to Emergency Needs from Extreme Weather) was introduced in 2024 as a conventional cost-recovery bill: a $9 billion fund assessed against roughly forty companies that emitted more than one billion tons of greenhouse gases, with the proceeds directed to adaptation, mitigation, and health-disparity grants. It did not pass. Reintroduced in 2025 as HB 128 / SB 149, it was amended during the session into a study-only measure and renamed "Climate Change Adaptation and Mitigation—Total Assessed Cost of Greenhouse Gas Emissions—Study and Reports." In that form it passed both chambers by veto-proof margins in April 2025. Governor Moore vetoed it in May. The General Assembly overrode the veto in December 2025, and the Governor separately funded the study—$470,000 from the Strategic Energy Investment Fund plus a $30,000 grant from the Rockefeller Family Fund.

ENACTED STATUTES: KEY DATES

DEC. 2024	APR.–MAY 2025	DEC. 2025	AUG. 31, 2026	DEC. 1, 2026	JAN. 2027
Vermont's Act 122 challenged by U.S. Chamber and API; New York signs S.2129B (Dec. 26)	Maryland study bill passes; Governor Moore vetoes. 24 AGs and DOJ challenge Vermont	Maryland General Assembly overrides the veto; study funded	N.D.N.Y. holds New York's Act preempted in *West Virginia v. James*; appeal expected	Maryland Comptroller's cost study due	Vermont Treasurer's assessment due; statute is uncapped

Open markers denote scheduled future dates. Source: Section 3.1.

The study, due December 1, 2026, directs the Comptroller in coordination with other agencies to quantify the total cost of greenhouse gas emissions to the state, with covered entities defined as companies emitting more than one billion tons between 1994 and 2023. Its sponsors have been explicit that it is a predicate: advocates intend to return in 2027 with legislation requiring those companies to pay. Maryland is therefore not a state that declined to act but simply increased the number of steps to achieve the same end.

MARYLAND AS A TIMELY CASE STUDY FOR THIS ANALYSIS

Study due December 1, 2026.

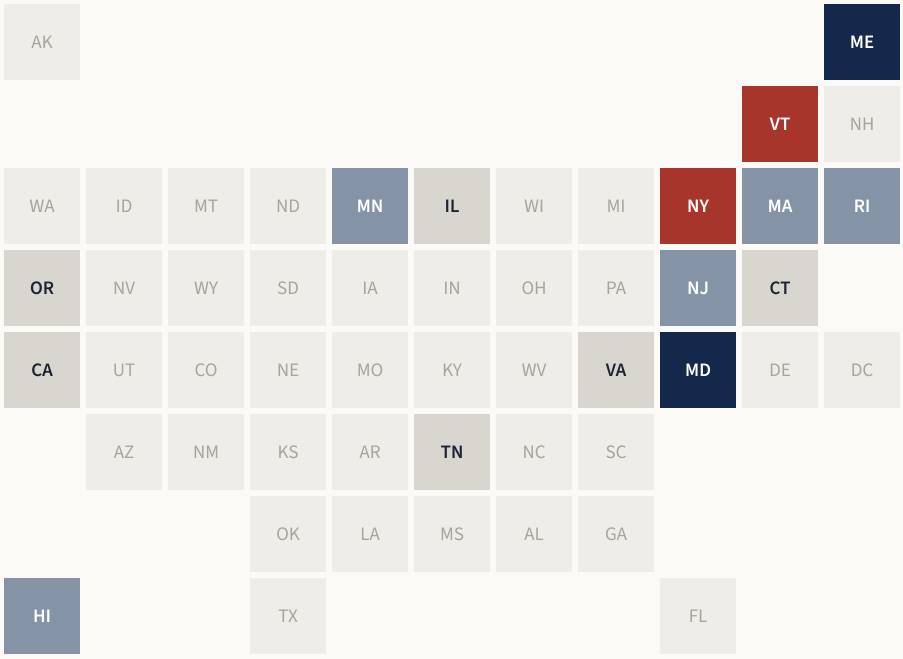
The mandated study includes an economic analysis of whether covered entities could pass assessment costs on to Maryland consumers—the precise question at issue in Section 4. Maryland has legislatively commissioned an answer, and it is due in weeks from the time of this writing.

There are two important notes on this topic. First, the study's stated purpose, as described by its advocates, is to ensure that covered entities will not be able to pass costs to consumers. A study framed to confirm a conclusion rather than to test it is not an honest inquiry so the methodology should be scrutinized when it is published. Second, the supporting record already suggests the eventual assessment will exceed $9 billion. The Comptroller reported in April that Maryland sustained 85 natural disasters between 1980 and 2024 at a cost of $10 to $20 billion; the Maryland Department of the Environment estimated in 2024 that meeting state emissions goals would require $1 billion annually; and the Center for Climate Integrity has put the cost of coastal seawall protection at $27.4 billion by 2040. The $9 billion figure in Table 3 should be read as a conservative estimate, or more like a floor than a ceiling.

3.2 Pending and proposed legislation

Twelve additional states considered superfund legislation in the 2025–2026 sessions. The table below reflects the most recent version in each state, per the methodology described in Section 1.3.

STATE CLIMATE SUPERFUND LEGISLATION, STATUS OF MOST RECENT VERSION



LEGEND

- **Enacted** — Vermont (in litigation), New York (held preempted 8/31/26)
- **Study enacted** — Maryland (over veto), Maine (reduced to a study)
- **Pending or stalled** — Massachusetts, New Jersey, Minnesota, Hawaii, Rhode Island
- **Failed or died** — Connecticut, Illinois, Oregon, Virginia, California, Tennessee

Source: Table 4. Tile grid, not geographic. Statuses as of September 2026.

TABLE 4

State climate superfund legislation — most recent versions

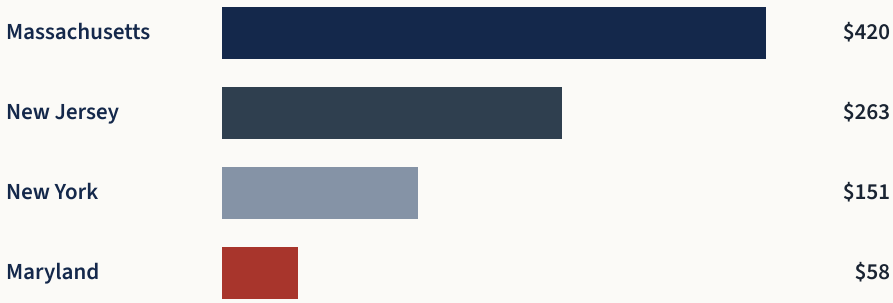
STATE	BILL (YEAR)	STATUS	STATED TARGET
Vermont	S.259 / Act 122 (2024), am. Act 47 (2025)	**Enacted**; in litigation	Uncapped
New York	S.2129B (2024)	**Enacted**; held preempted 8/31/26	$75B / 25 yr
Massachusetts	H.1014 & S.588 (2026)	Pending	$75B / 25 yr
New Jersey	A.3735 & S.2338 (2026)	Advanced from committee; stalled	$50B / 20 yr
Maryland	RENEW Act — HB 128 / SB 149 (2025)	Study enacted over veto 12/25; assessment bill expected 2027	$9B (2024 bill)
Connecticut	HB 5156 (2026)	Died when session expired	Study-determined
Illinois	HB 4773 & SB 2981 (2026)	Failed to advance	Study-determined
Minnesota	SF 4126 & HF 3945 (2026)	Pending	Study-determined
Rhode Island	HB 7004 & SB 2024 (2026)	Limited momentum	Study-determined
Hawaii	SB 1652 (2026)	Pending; carried over	Study-determined
Maine	LD 1870 / SP 740 (2026)	Reduced to a study	Study-determined
Oregon	SB 1541 (2026)	Failed	Study-determined
Virginia	SB 420 (2026)	Failed	Study-determined
California	AB 1243 & SB 684 (2025)	Failed	Study-determined
Tennessee	SB 702 & HB 716 (2025)	Failed	Study-determined

Superseded versions excluded from quantitative estimates: CT HB 6280 and SB 1199 (2025); ME LD 1808 / HP 1209 (2025); OR SB 682 and SB 1187 (2025); RI HB 5424 and SB 326 (2025); MA H.872 and S.481 (2023); NJ S.3545 (2025). Maryland is included at the $9 billion figure from the 2024 RENEW Act, the amount its own cost-recovery legislation contemplated; the enacted 2025 version imposes no assessment, and the successor bill is expected in 2027. Modeled over 25 years for comparability, though the bill as drafted contemplated a one-time fee—see Section 5.2.

A SEVENFOLD SPREAD

Only four jurisdictions name a figure. Their stated targets imply annual per-capita assessments that differ by a factor of seven for programs of materially identical design. Eleven other states leave the total to a study.

Source: Section 5.2. Implied annual assessment per resident, from stated statutory targets.



Median of the four: **$207** per resident per year — the central-case benchmark applied to the eleven study-determined states.

3.3 What the redrafting reveals

The pattern of revision across sessions, broadly speaking, indicates that these changes are not refinements to stable policy instruments but rather reengineering of contested mechanisms so that they may either survive legal and political challenges in the future and/or increase penalties on energy providers.

Oregon

The 2025 drafts diverged principally on who administers the Climate Superfund Cost Recovery Program. The first version assigned the State Treasurer responsibility for assessing liability. The second moved the lead regulatory role to the Department of Land Conservation and Development, with the Department of Environmental Quality issuing demands. The 2026 reintroduction retained the second structure. The same sponsors carried each version.

Connecticut

The 2026 edition differed modestly from 2025 but appropriated $300,000 to build the administrative apparatus for the fund and tasked the Connecticut Equity and Environmental Justice Advisory Council with developing further regulation of energy providers. Although the appropriation is small, the precedent of standing administrative machinery is not.

Rhode Island

The substantive change between sessions concerned the emissions baseline. The 2025 bill used a 2009 baseline; the 2026 version sought recovery for emissions from 2000 through 2025. Extending the lookback window by nine years materially expands both the pool of covered parties and each party's apportioned share.

New Jersey

The 2025 version placed cost-recovery authority within the Department of Environmental Protection. The 2026 version retained the same sponsors, the same structure, and the same $50 billion target spanning 1995 through 2024—but was renamed the "Polluters Pay to Make New Jersey More Affordable Act." The renaming is notable. A bill whose own sponsors judged it necessary to attach the word "affordable" to a $50 billion assessment on energy suppliers is a bill whose sponsors understand the affordability objection perfectly well.

Massachusetts

Because Massachusetts operates on a two-year legislative cycle, its revisions are consolidated. The current version reinforces cost-recovery demands, establishes the fund, and appropriates for climate adaptation projects. It retains the one-billion-metric-ton liability threshold and adds a ten percent late payment penalty. It also requires development of a statewide master climate plan in coordination with the Office of Environmental Justice and Equity and with stakeholders including environmental justice community representatives and labor organizations.

3.4 Federal legislation

Polluters Pay Climate Fund Act of 2025. S.25 and H.R.1135 in the 119th Congress would impose a national assessment generating $100 billion annually a decade ($1 trillion over that 10-year window) on the largest fossil fuel extractors and refiners, including foreign-owned companies operating in the United States. Shares would be apportioned by percentage of global emissions, with an applicable payment date of September 30, 2026. The bill directs not less than $15 billion to FEMA response and resilience programs and not less than $6 billion to Clean Air Act grants, and reserves 40 percent of annual appropriations from the fund for environmental justice communities. This is the most recent version and supersedes the 2024 introduction; only the 2025 version is carried into the estimates.

Stop Climate Shakedowns Act (2026). Introduced by Sen. Cruz and Rep. Hageman, this bill moves in the opposite direction: it would reassert federal primacy over greenhouse gas regulation and bar retroactive climate liability suits. It is the principal federal legislative response to the state campaign and is discussed, together with the state liability shields enacted in 2026, in Section 8.5.

PROPOSED FEDERAL FUND

$1T

over ten years, S.25 / H.R.1135 — proposed, not enacted

= $100 billion annually, 51.5% of the central-case burden

4 Why These Costs Reach Consumers

Proponents of climate superfund legislation have advanced a specific economic claim: that these assessments cannot raise consumer prices. The argument deserves a serious answer, because it is the primary defense of the entire political case used by those advocating for these penalties to be levied on energy companies.

4.1 The proponents' argument

The claim, developed most fully in analyses from the Institute for Policy Integrity and the Fiscal Policy Institute and endorsed by economists including Joseph Stiglitz, runs as follows. The assessments are levied on historical production. They are therefore fixed costs, not marginal costs. A profit-maximizing firm sets price where marginal revenue equals marginal cost; a lump-sum charge on past behavior does not shift the marginal cost curve, so the revenue-maximizing price is unchanged. A firm that raised prices anyway would simply lose market share to competitors not subject to the assessment. Moreover, crude oil is priced in a global market, and no individual firm can move that price unilaterally. The cost therefore falls on shareholders. While this argument may be appealing to some, it is also wrong in four specific ways.

4.2 Four failures of the fixed-cost argument

Failure one: retroactive liability is a forward-looking signal

The argument treats the assessment as a one-time, unrepeatable event. Firms do not. As Jonathan Klick has argued, while the charges are retrospective in form, they establish that production carries liability that legislatures may impose at a later date of their choosing. That expectation is a present increase in the marginal cost of production. A refiner deciding today whether to commit capital to a twenty-year asset must now price the possibility that a legislature in 2045 will assess that asset's output from 2026. The correct response is to raise the hurdle rate, which means either higher prices, less investment, or (more commonly) both.

The fourteen-state pattern documented in Section 3 makes this concrete. A single state's assessment might plausibly be treated as idiosyncratic. Twelve states considering substantively identical legislation, plus a federal bill, plus more than thirty damages actions, is not an idiosyncratic event. It is a sea change, and firms price sea changes so as not to drown.

Failure two: the competitive-discipline argument assumes a residual competitor

The claim that a burdened firm would be undercut by unburdened rivals requires unburdened rivals to exist. The statutes are drafted to capture essentially every major producer above the one-billion-ton threshold with a connection to the state. The federal bill would capture domestic and foreign suppliers alike. If substantially all suppliers in a market face proportionate assessments at substantially the same time, the disciplining mechanism is absent and the Institute for Legal Reform notes precisely this point in its New Jersey modeling: with more than a dozen states pursuing similar bills against largely the same set of companies, there is limited scope to spread the cost. Instead, more of the cost is passed to consumers, ceteris paribus.

"Twelve states considering substantively identical legislation, plus a federal bill, plus more than thirty damages actions, is not an idiosyncratic event. It is a sea change, and firms price sea changes so as not to drown."

12 states with similar bills

1 federal bill

30+ damages actions

Failure three: global crude pricing does not govern the retail stack

It is true that no single firm sets the world price of crude. It does not follow that no other cost beside the price of crude can reach the pump. The retail price of gasoline is crude plus refining, distribution, marketing, and taxes. State-level assessments land disproportionately on the mid- and downstream segments—refining and distribution—which are regionally concentrated, capacity-constrained, and priced locally rather than globally. The same is true of electricity: retail rates are set through state ratemaking proceedings in which prudently incurred costs are recoverable from ratepayers by design. A utility that pays a climate assessment will seek recovery in its next rate case, and the regulatory framework is built to grant it.

Failure four: shareholders are households

Even accepting arguendo that the entire burden falls on the owners of equity, the conclusion that consumers are unaffected does not follow. Energy equities are among the most widely held assets in the country, concentrated in public pension funds, state retirement systems, index funds, and 401(k) accounts. As Klick observes, the incidence falls not on a caricature of nineteenth century inherited oil wealth but on teachers, sanitation workers, police officers, and firefighters whose retirements are funded by those holdings. A policy that impairs the value of public pension assets in order to fund state adaptation budgets has not avoided a transfer from middle-class and low-income households.

THE CANDID VERSION OF THE ARGUMENT

An indirect carbon tax, described by one of its architects.

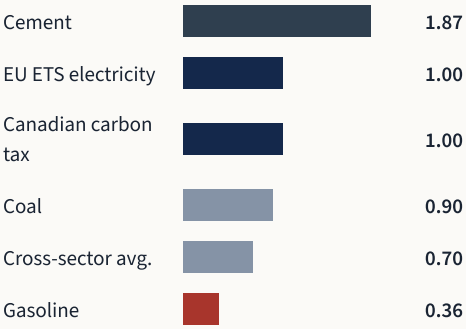
David Bookbinder, formerly counsel of record in the Boulder litigation, acknowledged in October 2025 that the litigation strategy functions as an indirect carbon tax—companies facing liability pass costs to the consumers who buy their products. The goal is to dissuade consumers from buying those products, as is the rationale behind so-called sin taxes on tobacco and alcohol.

This is the honest description of the mechanism, offered by one of its architects. The objection in this paper is that such a carbon price assembled from tort judgments and retroactive assessments is the least transparent, least accountable, and least efficient way to impose such a cost—and possibly the only way to impose one without ever asking voters.

4.3 What the empirical literature shows about pass-through

The assumption of full pass-through is not novel. Empirical work on carbon pricing finds pass-through rates that vary by sector but are frequently complete or near-complete: the EU Emissions Trading System price passes fully into electricity prices; the Canadian carbon tax passes through fully; across sectors generally, estimated average pass-through is around 70 percent, ranging from factors of approximately 0.36 for gasoline to 1.87 for cement, where firms in imperfectly competitive markets raise prices by more than the direct cost imposed, though possibly not more than the combination of direct and indirect costs together. Coal prices absorb roughly 90 percent of a carbon tax. Section 5 reports results at 100 percent pass-through for comparability with the Institute for Legal Reform's state-level modeling, and provides sensitivities at 85, 70, and 50 percent.

OBSERVED CARBON-PRICE PASS-THROUGH



Pass-through factor (1.00 = full). Source: Section 4.3, empirical carbon-pricing literature as cited.

5 Quantifying the Burden

5.1 Scenario definition

The estimate answers a counterfactual: if every pending superfund statute were enacted and enforced on its stated terms, every climate-damages action succeeded, and the federal Polluters Pay Climate Fund Act became law, what recurring cost would the American energy system bear, and what would that mean for households?

This is deliberately a full-success scenario within the bounds of documented losses. It is not a forecast but an estimate as to what would happen if the climate advocates behind these various initiatives succeeded. Section 6 addresses what happens when claims are not bounded that way, and Section 7 explains why the exposure imposes real costs today regardless of outcome.

CENTRAL ANNUAL BURDEN BY COMPONENT

Full-success scenario, $ billions per year

$194B

ANNUALLY · CENTRAL

$26.8B	$42.0B	$100.0B	$25.3B
13.8%	21.6%	51.5%	13.0%
State superfund programs	Climate-damages litigation	Federal Polluters Pay Climate Fund Act (proposed)	Overhead / capital risk premium

PER HOUSEHOLD, PER YEAR

$1,465

central · range $1,248–$2,111

SHARE OF U.S. END-USE ENERGY SPENDING

11.4%

central · range 9.7%–16.5%

CUMULATIVE PER HOUSEHOLD, 10 YEARS

$14,651

central · nominal, undiscounted

Source: Tables 5 and 6. Exposure under a full-success scenario, not a forecast. Author's calculations; see Section 5.2 and Appendix B.

5.2 Method

Component A — State superfund programs. Four jurisdictions name a figure: New York ($75B / 25 yr), Massachusetts ($75B / 25 yr), New Jersey ($50B / 20 yr), and Maryland ($9B). These imply annual per-capita assessments of $151, $420, $263, and $58 respectively—a sevenfold spread across programs of materially identical design. For the eleven states whose bills leave the total to a study, we apply the median implied rate ($207 per resident per year) for the central case, the minimum ($58) for the low case, and the maximum ($420) for the high case, scaled by state population over a 25-year recovery window. Vermont, whose statute is uncapped, is estimated on the same basis. Each program is then annualized over its own recovery period.

Treatment of Maryland. Maryland is a slightly different case. Applying the most-recent-version rule literally would assign it zero, because the version actually enacted in 2025 mandates only a study. But the study is an express predicate for a 2027 assessment bill, and excluding the state would understate exposure in exactly the way a full-success scenario is meant to capture. We therefore include Maryland at the $9 billion contemplated by its own 2024 cost-recovery bill, amortized over 25 years for comparability with New York and Massachusetts. Readers should note two things. The bill as drafted described a one-time fee rather than an installment stream; collected at once, $9 billion is roughly $3,666 per Maryland household against $147 per year on a 25-year schedule. And the supporting record—a Comptroller finding of $10 to $20 billion in disaster costs since 1980, and a $27.4 billion seawall estimate—points toward a successor bill larger than $9 billion. As stated earlier, we therefore believe the $9-billion cost to be a conservative estimate.

Component B — Litigation. Because most complaints plead no dollar figure, we adopt the Institute for Legal Reform's conservative convention: successful plaintiffs recover at least the documented disaster losses in their jurisdictions. NOAA NCEI records approximately $1.4 trillion in U.S. billion-dollar weather and climate disaster losses over 2015–2024. We assume roughly 40 percent of the U.S. population resides in a jurisdiction that has already filed, yielding $560 billion for the central case; the low case uses $300 billion, approximating the "hundreds of billions" in currently pleaded demands; the high case assumes national replication at $1.4 trillion. Recoveries are amortized over ten years.

Component C — Federal legislation. $1 trillion over ten years, per the text of S.25 / H.R.1135: $100 billion annually.

Component D — Overhead and risk premium. Defense costs, compliance infrastructure, reserving, disclosure, insurance, and the incremental cost of capital attributable to unquantified retroactive liability. Estimated at 15 percent of components A through C. This is conservative relative to observed litigation-cost ratios in comparable mass tort programs.

Allocation to households. Following the ILR methodology, the total is distributed across the commercial, electric, industrial, and transportation sectors in proportion to their shares of energy-related carbon emissions, then divided by the more than 130 million U.S. households (U.S. Census Bureau, July 2025), assuming full pass-through. Costs falling on commercial and industrial users are treated as reaching households through the prices of goods and services.

A · STATE PROGRAMS

Named targets, or median implied rate of **$207**/resident/yr for study-determined states; 25-year window

B · LITIGATION

Documented disaster losses in plaintiff jurisdictions: **$560B** central, amortized over ten years

C · FEDERAL BILL

$1 trillion over ten years per S.25 / H.R.1135: $100B annually

D · OVERHEAD

15% of A through C: defense, compliance, reserving, disclosure, insurance, cost of capital

MARYLAND'S $9 BILLION, TWO WAYS

The 2024 RENEW Act described a one-time fee. The model amortizes it over 25 years for comparability with New York and Massachusetts.

$3,666

per Maryland household if collected at once

$147

per household per year on a 25-year schedule (as modeled)

5.3 Results

TABLE 5

Annual burden by component ($ billions per year)

COMPONENT	LOW	CENTRAL	HIGH	SHARE (CENTRAL)
A. State climate superfund programs (15 states)	13.8	26.8	45.2	13.8%
B. Climate-damages litigation	30.0	42.0	98.0	21.6%
C. Federal Polluters Pay Climate Fund Act	100.0	100.0	100.0	51.5%
D. Overhead and capital risk premium	21.6	25.3	36.5	13.0%
Total	**165**	**194**	**280**	**100%**

TABLE 6

Household impact

MEASURE	LOW	CENTRAL	HIGH
Per household, per year	**$1,248**	**$1,465**	**$2,111**
Per person, per year	$486	$571	$822
Cumulative per household, 10 years	$12,481	$14,651	$21,108
Cumulative per household, 25 years	$31,202	$36,626	$52,770
As share of U.S. end-use energy expenditures	9.7%	11.4%	16.5%

Cumulative figures are nominal and undiscounted. Statutory installment mechanisms generally index to inflation, so real-dollar totals would be higher; ILR notes that a $50 billion New Jersey program paid in installments reaches $60.7 billion after twenty years at 2 percent inflation as measured by the CPI.

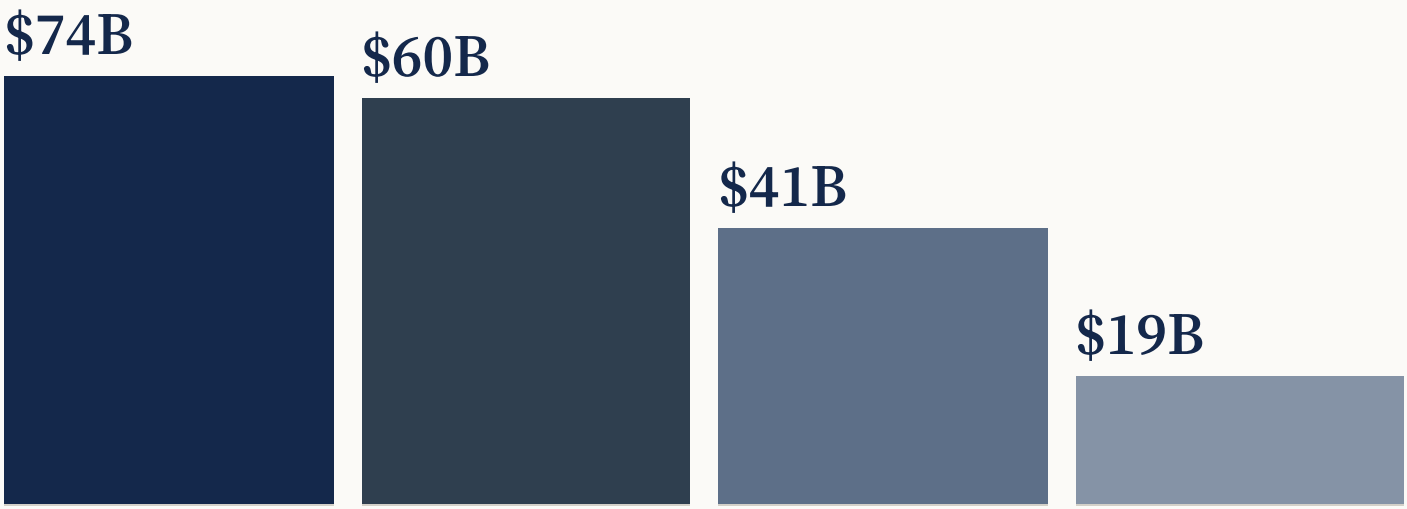
5.4 Translation into prices

Allocating the central-case burden across sectors by emissions share produces the following:

TABLE 7

Implied price effects, central case

SECTOR	ALLOCATED BURDEN	UNIT EFFECT
Transportation (38%)	$74B / yr	≈ 40.5 cents per gallon of motor fuel
Electric power (31%)	$60B / yr	≈ 1.47 cents per kWh (+8.6% on a 17¢ residential rate)
Industrial (21%)	$41B / yr	Embedded in manufactured goods prices
Residential & commercial (10%)	$19B / yr	Heating fuels and commercial pass-through



Annual allocated burden, central case, $ billions per year. Source: Table 7; sectoral CO_2 shares from EIA.

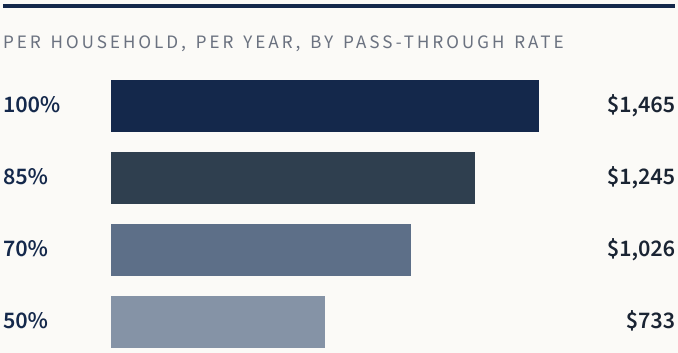
A 41-cent-per-gallon increase is close to the entire federal and average state motor fuel tax burden combined. A 1.6-cent-per-kilowatt-hour increase is roughly two years of historical electricity price growth delivered at once. Neither would be enacted as such by any legislature that would have to defend it at an upcoming election.

5.5 Sensitivity analysis

TABLE 8

Central case under alternative pass-through assumptions

PASS-THROUGH	PER HOUSEHOLD, PER YEAR	RATIONALE
100%	**$1,465**	Full pass-through; ILR convention
85%	$1,245	Near-complete, consistent with EU ETS electricity findings
70%	$1,026	Cross-sector empirical average
50%	$733	Deliberately overly conservative floor



Central case, $ per household per year. Source: Table 8.

Even at a 50 percent pass-through rate—well below what the empirical literature supports for electricity and coal—the burden exceeds $700 per household annually and is more than $7,000 over a decade. There is no plausible parameterization under which the consumer impact is zero.

5.6 Cross-validation

The national estimate can be checked against independent state-level modeling by the U.S. Chamber of Commerce Institute for Legal Reform, which uses the same sectoral-allocation method:

TABLE 9

Independent state-level estimates

JURISDICTION	MEASURE ANALYZED	ILR HOUSEHOLD ESTIMATE
New Jersey	A.3735 / S.2338 — $50B, installment basis	$687 in year one; $13,735 over 20 years
New Jersey	S.3545 (2025) — $40B over 9 years	$1,017 annually; $9,160 total
Minnesota	Greenhouse Gas Pollution Superfund Act	≈ $6,883 in 2026, rising to $7,243 by 2030
Massachusetts	Climate superfund proposal	≈ $276 per household
New York	S.8585 — disaster-recovery litigation authority	≈ $2,500 from $20.25B in 2020–2024 disaster costs
Maryland	RENEW Act — $9B assessment (author's calculation)	$3,666 one-time, or $147 per year over 25 years

Source: U.S. Chamber of Commerce Institute for Legal Reform state analyses, 2026; NJBIA testimony.

These figures are for single-state measures. The national estimate of $1,465 per household reflects the stacking of fifteen state programs, thirty-plus damages actions, and a federal assessment—and sits well inside the envelope those state analyses imply. If anything, the central estimate is conservative: the Minnesota analysis alone projects a per-household burden four times the national central case from a single state's bill.

SINGLE STATE VS. NATIONAL STACK

The Minnesota analysis alone projects a per-household burden four times the national central case from a single state's bill.

$1,465

national central estimate, fifteen programs, 30+ actions, one federal bill

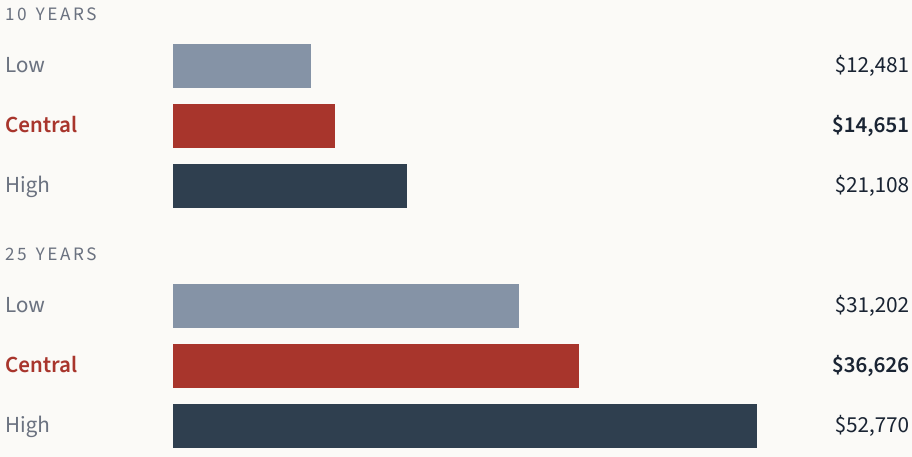
≈$6,883

ILR estimate for Minnesota alone in 2026, a single state's bill

THE LONG-TERM HOUSEHOLD BURDEN

Annual figures compound. Over a decade the central case reaches $14,651 per household; over the 25-year recovery windows written into the New York and Massachusetts programs, $36,626.

Cumulative per household, nominal and undiscounted. Source: Table 6.



6 The Problem of Unbounded Claims

Section 5 produces a bounded number. It does so by substitution: because most plaintiffs do not say what they want, we supplied an external benchmark via documented disaster losses and treated that as the recovery. That is defensible and conservative, but it should be understood for what it is. The headline estimate is not a measure of what is being demanded. It is a measure of what a court might award if it anchored on losses that have actually been recorded.

There is no guarantee courts would anchor there. This section sets out what the claims look like when they are taken on their own terms.

6.1 How open-endedness appears in the record

- **Unpleaded damages.** Of the actions catalogued in Tables 2 and 3, exactly one — Multnomah County — states a figure. The rest seek abatement funds, compensatory and punitive damages, treble damages, restitution, and fees without quantification.
- **Disgorgement.** Michigan seeks disgorgement of all profits alongside antitrust treble damages. California added a disgorgement remedy by statute (AB 1366) and amended its complaint to invoke it. Proposed New York legislation would authorize disgorgement of profits obtained through an undefined "violation." Disgorgement of all profits from participation in the fossil fuel value chain is not a damages measure; it is a wind-up order.
- **Uncapped statutes.** Vermont's Climate Superfund Act sets no ceiling. The total is whatever the Treasurer's January 2027 report concludes it is. Eleven of the fifteen state programs in Table 4 likewise defer the number to a study.
- **Courts have named the problem.** Dismissing Charleston's suit, a South Carolina court observed that under the plaintiff's theory airlines, automakers, power companies, and agricultural firms could all be liable, making the list of potential defendants, like the list of potential plaintiffs, appear boundless.

6.2 What attribution modeling implies

If courts were to anchor damages on attribution science rather than recorded losses, the arithmetic changes by orders of magnitude. Climate Analytics attributes roughly $20 trillion in climate damages to the twenty-five largest oil and gas producers for emissions from 1985 to 2018, derived from the social cost of carbon; Grasso and Heede reach $23.2 trillion for twenty-one companies in the Carbon Majors dataset. These are global figures. Apportioning a United States share using the U.S. share of global output as an exposure proxy gives the following:

TABLE 10

High-anchor scenarios

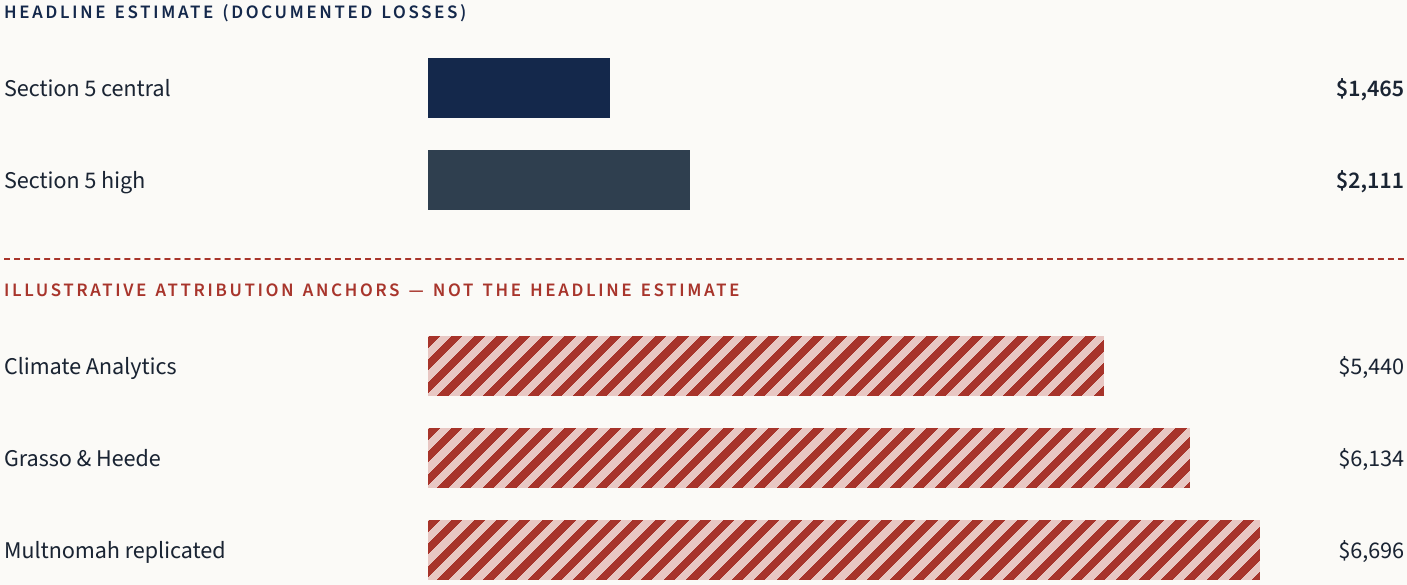
ILLUSTRATIVE — NOT THE HEADLINE ESTIMATE

ANCHOR	GLOBAL ATTRIBUTION	U.S. SHARE	ANNUAL BURDEN	PER HOUSEHOLD
Documented losses (Section 5 central)	—	$0.4T	$194B	**$1,465**
Documented losses (Section 5 high)	—	$1.0T	$280B	**$2,111**
ILLUSTRATIVE Climate Analytics (25 producers)	$20.0T	$5.0T	$721B	$5,440
ILLUSTRATIVE Grasso & Heede (21 producers)	$23.2T	$5.8T	$813B	$6,134
ILLUSTRATIVE Multnomah demand replicated	—	$6.4T	$881B	$6,696

U.S. share estimated at 25 percent of global attribution using share of world output as an exposure proxy; amortized over ten years and combined with Components A, C, and D from Section 5. The Multnomah row applies that county's $51.5 billion demand—roughly $63,190 per resident—to 30 percent of the U.S. population.

PER HOUSEHOLD, PER YEAR, BY ANCHOR

SHADED ROWS ARE ILLUSTRATIVE, NOT FORECASTS



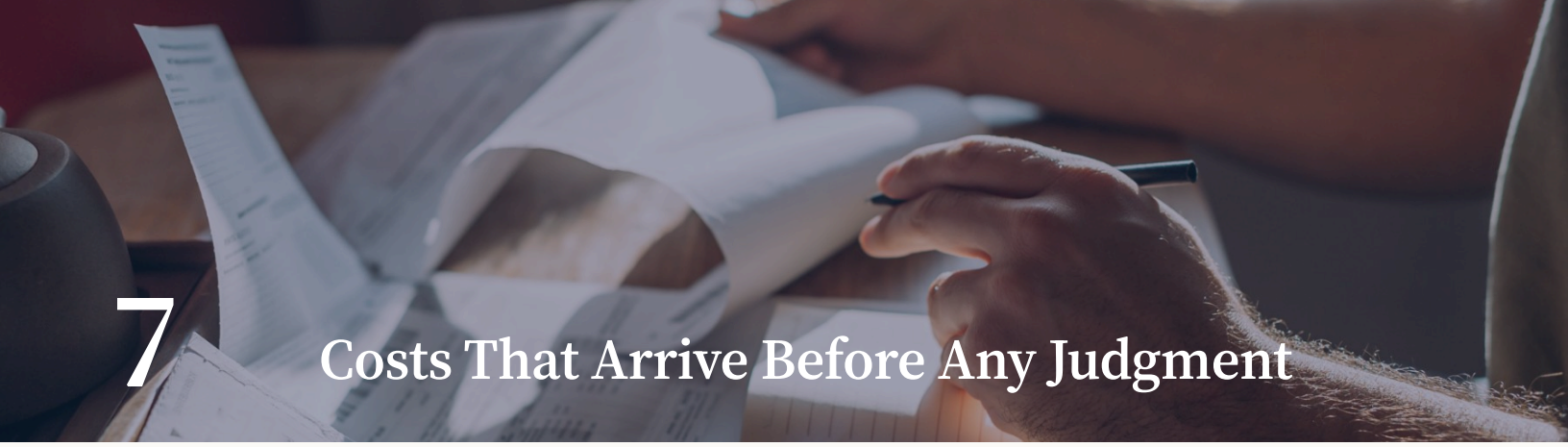
$ per household per year. Source: Table 10. Hatched bars are illustrative scenarios the paper does not adopt.

We do not adopt these figures, and the paper's headline estimate deliberately excludes them. A judgment of $5 trillion would not be paid; it would be restructured, and the resulting disruption to fuel and power supply would impose costs through a different channel entirely. But the scenarios are not fanciful inventions. They are the published outputs of the attribution literature that plaintiffs themselves cite, applied to the theory plaintiffs themselves plead. Three independent anchors—two academic attribution studies and one actual filed demand—converge on the same order of magnitude, roughly four times the documented-loss estimate. We once again consider the estimates in this paper to be conservative.

6.3 Why unboundedness is itself the cost

The practical significance is not which of the estimates in figure 10 is right. It is that no one can say. A liability whose magnitude ranges across an order of magnitude depending on which anchor a court selects cannot be reserved against with any confidence, cannot be insured at a rational premium, and cannot be priced into a long-lived asset without a substantial margin for error.

That margin is the mechanism by which these claims raise consumer prices before a single judgment is entered. A refiner evaluating a twenty-year investment does not need to believe it will lose. It needs only to observe that the loss, if it comes, is unbounded—and to raise its hurdle rate accordingly. Component D of the estimate captures a portion of this at 15 percent of direct costs. That allowance is conservative precisely because the underlying uncertainty is unquantifiable.



7 Costs That Arrive Before Any Judgment

The estimates above assume the campaign succeeds. Its most significant near-term costs do not depend on that assumption.

7.1 The cost of contingent liability

Publicly traded companies must reserve against and disclose material contingent liabilities. When the liability is unquantified, unbounded, and expanding (thirty-plus actions, fourteen legislative programs, a federal bill, and no reliable method of estimating exposure) the resulting uncertainty is priced into the cost of capital immediately. Every dollar of increased capital cost is a dollar that must be recovered through higher prices or withheld from investment.

This matters most for the assets with the longest payback periods: refineries, pipelines, transmission, storage, and generation. These are precisely the assets a growing economy with rising electricity demand most urgently needs.

7.2 Supply contraction and reliability

U.S. electricity demand is rising for the first time in two decades, driven by data centers, electrification, and reshored manufacturing. Retail electricity revenue per kilowatt-hour rose 7.1 percent in 2025 and 9.0 percent year-over-year in February 2026, with double-digit increases in Virginia, Ohio, and Pennsylvania. Against that backdrop, policies that raise the risk premium on dispatchable generation and fuel supply do not merely raise prices—they constrain the supply response that would otherwise moderate those rising prices.

The pattern is visible in the litigation record itself, including petitions challenging Department of Energy orders that kept coal-fired units at the TransAlta Central Generation facility and the Campbell plant available to operate during declared reliability emergencies. Whatever the merits of those particular orders, litigation aimed at removing dispatchable capacity during a demand surge is litigation aimed at higher prices and thinner reserve margins.

AN EXISTING AFFORDABILITY PROBLEM

Investor-owned utilities requested $22 billion in rate increases in 2025 and $18.6 billion in the first half of 2026 alone, against a 2011–2016 average near $7 billion.

Requested rate increases, $ billions. Source: Executive Summary, principal conclusion 3.

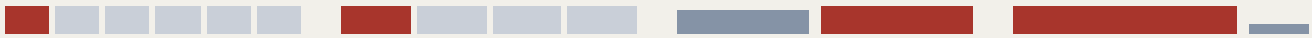
7.3 Regressivity

Energy demand is inelastic in the short run because energy is a necessity. A household cannot meaningfully reduce its consumption of heat, light, or transportation in response to a price increase without reducing its standard of living. The burden therefore falls hardest on those whose budgets are least able to absorb the higher prices.

The National Energy Assistance Directors Association reports an energy burden of 9.1 percent of income for low-income households against 2.4 percent for all others. Roughly one in six households is behind on energy bills, and about one in four has reduced spending on food or medicine to pay those late bills. Forced disconnections rose from 3 million in 2023 to 3.5 million in 2024. California's Legislative Analyst's Office estimated that at upper-bound allowance prices, that state's cap-and-trade program alone would cost the average household about $700 per year, and noted the burden would be particularly heavy for lower-income households, who spend a relatively larger share of income on transportation fuels.

A policy delivering an additional $1,465 per household on average delivers considerably more than that as a share of income to the households already choosing between the utility bill, the pharmacy, the grocery, and rent.

HOUSEHOLD ENERGY HARDSHIP



1 in 6
households behind on energy bills

1 in 4
reduced spending on food or medicine to pay late bills

3.0M → 3.5M
forced utility disconnections, 2023 to 2024

9.1% vs 2.4%
energy burden, low-income vs. all other households

Source: National Energy Assistance Directors Association, as cited in Section 7.3.

7.4 Interstate and constitutional asymmetry

Noteworthy is the structural objection that persuaded the Northern District of New York: these statutes assess out-of-state producers for global emissions in order to fund in-state infrastructure, while exempting the in-state consumers who purchased and burned the product. New York imports the natural gas and coal that power its economy. Its statute charged the producers and exempted the users.

This is not a marginal drafting point but is a way to export tax burden to other jurisdictions. A state that can export the fiscal consequences of its own consumption to producers in Texas, West Virginia, Oklahoma, and North Dakota has found a way to fund its budget without explicitly or directly taxing its own voters. Twenty-two state attorneys general sued New York on precisely that theory, and twenty-four intervened against Vermont.

22 state attorneys general sued New York over its Climate Change Superfund Act

24 state attorneys general intervened against Vermont's Act 122

8 Legal Trajectory

Two developments this year have substantially reframed the outlook on this topic and several other recent events in the courts and legislatures have had their own impacts.

8.1 *West Virginia v. James* (N.D.N.Y., August 31, 2026)

Chief Judge Brenda K. Sannes granted summary judgment to a coalition of twenty-two states, energy industry associations, and business groups, holding New York's Climate Change Superfund Act preempted by the Clean Air Act. The reasoning tracked *City of New York v. Chevron Corp.*: the Act's strict-liability cost-recovery scheme was materially indistinguishable from state-law climate claims the Second Circuit had already rejected, and the Clean Air Act leaves no room for a state to impose liability for interstate greenhouse gas emissions. The court separately held that demands against foreign producers would be barred by the foreign affairs doctrine, and concluded that EPA's 2026 rescission of the endangerment finding did not change the analysis. Having found preemption, the court did not reach the remaining constitutional claims.

This is the first decision to reach the merits of a climate superfund statute. It is a district court ruling, an appeal is expected, and it does not bind courts in Vermont or elsewhere. But it is a reasoned merits holding on the central legal question, and it will feature in every subsequent challenge.

8.2 *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*

No. 25-170, to be argued October 5, 2026 — the first case of the Supreme Court's October Term. The question presented is whether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse gas emissions on the global climate. The Court also asked the parties to address whether it has statutory or constitutional authority to hear the case. A decision is expected by mid-2027.

The possible outcomes are essentially binary. A holding that federal law preempts state climate tort claims would largely foreclose the damages litigation and severely weaken the statutory programs built on the same theory. A holding for Boulder would validate the framework and likely accelerate filings substantially. Either way, the case is the single largest determinant of the exposure quantified in Section 5.

8.3 Vermont

Vermont's statute remains in litigation before the District of Vermont in *Chamber of Commerce v. Moore* and *United States v. Vermont*, with twenty-four states intervening. The State Treasurer's damages assessment is due in January 2027, after which the Agency of Natural Resources would have a year to issue cost-recovery demands. Because the Vermont statute is uncapped, it presents a distinct risk profile from New York's: the liability is whatever the assessment concludes it is.

SUNCOR V. BOULDER COUNTY: TWO ESSENTIALLY BINARY OUTCOMES

ARGUED

Oct. 5, 2026

DECISION EXPECTED

Mid-2027

IF FEDERAL LAW PREEMPTS

Would largely foreclose the damages litigation and severely weaken the statutory programs built on the same theory.

IF THE COURT HOLDS FOR BOULDER

Would validate the framework and likely accelerate filings substantially.

The single largest determinant of the exposure quantified in Section 5. Source: Section 8.2.

8.4 The legislative response

State legislatures have been notably more cautious than advocacy has suggested. Of the twelve states that considered superfund bills in 2026, eight failed outright and three—Massachusetts, New Jersey, and Rhode Island—never gained momentum. Only Maine enacted anything, and lawmakers there reduced the bill to a study. Opposition in Illinois came substantially from labor and trade organizations, including the state Chamber, the Illinois Manufacturers Association, and the Pipe Trades Association. Connecticut's bill died when the session expired after sustained objections from consumer energy and retail fuel organizations.

At the federal level, the Stop Climate Shakedowns Act would reassert federal authority over greenhouse gas regulation and prohibit retroactive climate liability suits. Whether or not that particular vehicle advances, it identifies the correct remedy: the question of who bears the cost of climate adaptation is a question for Congress, resolved prospectively and uniformly, not for fifty legislatures and several hundred trial courts resolved retroactively and inconsistently.

8.5 The dismissal record and the countervailing legislative trend

To conduct a fair and accurate analysis, we also note that the litigation campaign has lost more often than it has won. Several states have moved affirmatively in the opposite direction.

Dismissals. On March 24, 2026, the Supreme Court of Maryland affirmed the dismissal of climate suits brought by Baltimore, Annapolis, and Anne Arundel County. The 6–1 majority held the claims federally preempted and, independently, that the localities had failed to state claims for public and private nuisance, failure to warn, and trespass under Maryland law. Justice Booth wrote that even if the defendants had labeled their products differently in Maryland and every consumer had heeded the warning, the effect on global emissions would have been negligible. Chief Justice Fader concurred in the preemption holding and would have stopped there.

Maryland joined a substantial line of authority. The Second Circuit rejected New York City's claims in 2021. Delaware's Superior Court largely dismissed the state's suit. New Jersey's claims were dismissed. The Bucks County Court of Common Pleas dismissed that county's suit in May 2025, holding that emissions are the province of the federal government through the Clean Air Act. A South Carolina court dismissed Charleston's suit, warning that the plaintiff's theory made both the plaintiff and defendant classes boundless; Charleston declined to appeal. Puerto Rico voluntarily dismissed its $1 billion action in 2025.

Against that, the Colorado and Hawaii supreme courts allowed claims to proceed, and cases in Massachusetts, Minnesota, Connecticut, Vermont, the District of Columbia, and Oregon have survived motions to dismiss and are moving toward discovery and trial. That division is the split now before the Supreme Court in *Suncor*.

8 of 12
states' 2026 superfund bills failed outright

3
never gained momentum (MA, NJ, RI)

1
enacted anything — Maine, reduced to a study

6–1
Maryland Supreme Court majority affirming dismissal, March 24, 2026

DISMISSED

New York City (2d Cir., 2021) · Delaware (largely) · New Jersey · Bucks County, Pa. (May 2025) · Charleston, S.C. · Puerto Rico ($1B, voluntarily, 2025) · Baltimore, Annapolis, Anne Arundel County (Md. Supreme Court, Mar. 24, 2026)

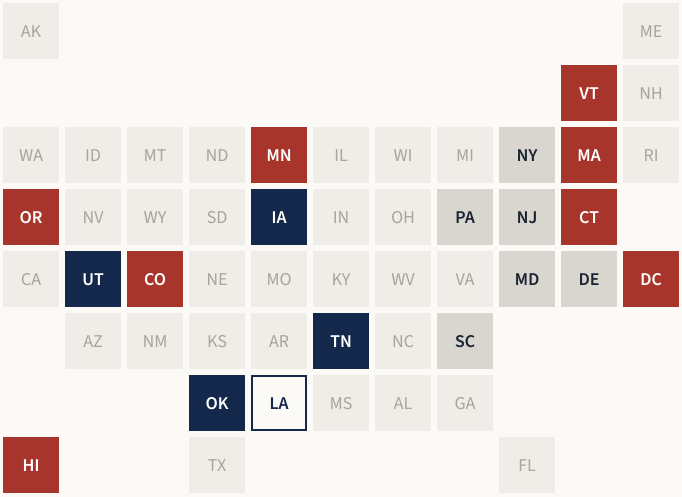
ALLOWED TO PROCEED OR SURVIVING DISMISSAL

Colorado and Hawaii (supreme courts) · Massachusetts · Minnesota · Connecticut · Vermont · District of Columbia · Oregon — moving toward discovery and trial

State liability shields. While blue-state superfund bills stalled, four states enacted laws in 2026 protecting energy producers from retroactive climate liability—Utah first, followed within weeks by Iowa, Oklahoma, and Tennessee, with Louisiana pending. Their practical effect in those states is limited, since climate litigation there has been essentially nonexistent. Their significance is as a template and as a signal that the question is being contested legislatively in both directions.

Federal response. Representative Hageman introduced the Stop Climate Shakedowns Act as H.R. 8330, with a companion from Senator Cruz. As described by its sponsor, the bill would prohibit retroactive climate liability suits and proceedings to enforce state energy penalty laws, dismiss pending actions on the date of enactment, and void state energy penalty statutes outright.

WHERE THE CLAIMS STAND, AND WHERE SHIELDS HAVE PASSED



Claims proceeding — CO, HI, MA, MN, CT, VT, DC, OR

Claims dismissed — MD, DE, NJ, NY, PA, SC; Puerto Rico (not shown)

Liability shield enacted — UT, IA, OK, TN

Shield pending — LA

Tile grid, not geographic. Source: Section 8.5; Table 2. Pending matters are unresolved.

WHY THE DISMISSALS DO NOT RESOLVE THE COST QUESTION

9 years

of carrying cost on the Boulder claim, in litigation since 2018 and not resolved before 2027

Every figure in Section 5 assumes success. The dismissal record means the probability-weighted expectation is materially lower than the central estimate—which is why that estimate is presented as exposure rather than forecast and as an estimate of what would happen if the climate activists actually got their way.

Regardless, three costs accrue regardless of outcome. Defense expenditure across more than thirty actions and four constitutional challenges to state statutes is incurred whether or not the defense prevails. Contingent liabilities must be reserved against and disclosed while they are pending. And the capital risk premium described in Section 6.3 is a function of uncertainty, not of expected loss—it is highest precisely when the outcome is genuinely unknown. Boulder has been in litigation since 2018 and will not be resolved before 2027. That is nine years of carrying cost on a claim that may ultimately produce nothing.

ACCRUES REGARDLESS · 1

Defense expenditure

across more than thirty actions and four constitutional challenges to state statutes

ACCRUES REGARDLESS · 2

Reserving and disclosure

contingent liabilities must be reserved against and disclosed while pending

ACCRUES REGARDLESS · 3

Capital risk premium

a function of uncertainty, not expected loss — highest when the outcome is unknown

9 The Affirmative Case: An Affordable, Reliable, Domestic Portfolio

Opposing retroactive liability is not a position on emissions because retroactivity does not affect future decisions, which public policy should aim to influence. Instead, it is a position on how policy should be made. The affirmative case rests on a straightforward premise: the United States needs abundant, affordable, reliable energy, and the policy framework should make that easier to build rather than more expensive to finance.

9.1 Natural gas

Natural gas is the backbone of the American grid and the single largest contributor to the decline in U.S. power-sector emissions over the past two decades—a reduction achieved by market substitution, not mandate. It is dispatchable, it firms intermittent resources, and its supply chain is domestic. Yet the litigation record shows sustained legal pressure on exactly the infrastructure that delivers it: challenges to FERC certificates for the Southeast Supply Enhancement Project, the Mountain Valley Southgate extension, the Northeast Supply Enhancement Project, the Rio Grande LNG terminal, the Delfin deepwater port, and the CP2 LNG export facility. Each challenge adds years and cost. Those costs reach ratepayers whether or not the challenge succeeds.

9.2 Coal

Coal's share of U.S. generation has declined substantially, but the remaining fleet provides dispatchable capacity and on-site fuel storage that the system continues to rely on during extreme weather. That reliance has been demonstrated repeatedly, including recently when the Department of Energy issued emergency orders in December 2025 requiring units at the TransAlta Central Generation facility and the Campbell plant to remain available, and those orders were promptly challenged. Retiring firm capacity faster than replacement capacity can be interconnected is a reliability decision disguised as an environmental one, and ratepayers absorb the difference through scarcity pricing and capacity payments.

9.3 Oil and refined products

Transportation remains overwhelmingly petroleum-fueled, and will for decades. U.S. refining capacity is concentrated, aging, and has not meaningfully expanded in a generation. Retroactive liability assessments fall hardest on exactly this segment—which is why the transportation sector carries the largest allocated share of the burden in Table 7, at roughly 41 cents per gallon. For low-income and even middle-class households, that can be the difference between a full tank and a partial one at a time when those households are already reducing other spending to cover fuel.

“Each challenge adds years and cost. Those costs reach ratepayers whether or not the challenge succeeds.”

NATURAL GAS

Backbone of the grid; largest contributor to the two-decade decline in power-sector emissions

COAL

Dispatchable capacity and on-site fuel storage relied on during extreme weather

OIL AND REFINED PRODUCTS

Transportation carries the largest allocated share: ≈ 41¢ per gallon in the central case

NUCLEAR

Dispatchable, dense, no operating CO_2 — and subject to the same procedural machinery (9.4)

9.4 Nuclear power

Nuclear energy deserves particular emphasis because it exposes the incoherence of the campaign most clearly. Nuclear generation is dispatchable, dense, produces no carbon dioxide in operation, and has the strongest safety record per unit of energy of any large-scale source. It should be the common ground between those most concerned about emissions and those most concerned about affordability and reliability.

It is not, because the same procedural machinery deployed against pipelines and generating stations is deployed with equal force against reactors. NRC compliance with the National Environmental Policy Act has historically required environmental impact statements taking three to five years to complete. Reactor applications have generally been routed through the most burdensome review pathway on the assumption that nuclear projects require a full EIS even where the record does not support it. Vogtle Units 3 and 4—the first new U.S. reactors in decades—came online years late at roughly $35 billion against an original $14 billion budget, with regulatory uncertainty a material contributor. Even geothermal is not exempt as evidenced by a Nevada geothermal developer challenging an Endangered Species Act listing that threatened its project.

Congress recognized the problem in the ADVANCE Act of 2024, which directs the NRC to streamline environmental reviews, expand categorical exclusions and generic impact statements, and report on a rulemaking schedule. The NRC has since proposed revisions to streamline contested adjudications, projecting cumulative savings of $51.7 million over 2026–2030. That is progress, and it is small relative to the problem.

NRC ENVIRONMENTAL IMPACT STATEMENTS

3–5 years

historically required to complete

VOGTLE UNITS 3 AND 4

roughly, with regulatory uncertainty a material contributor

NRC PROPOSED ADJUDICATION REFORMS

$51.7M

projected cumulative savings, 2026–2030 — “small relative to the problem”

Source: Section 9.4.

THE NUCLEAR TEST OF GOOD FAITH

A coalition genuinely organized around reducing emissions at the lowest cost to households would be the loudest advocate for rapid nuclear deployment. The observed pattern—sustained procedural opposition to nuclear, gas, coal, and, in the offshore wind cases catalogued in the legal and legislative records, even to renewables—suggests the organizing principle is opposition to energy infrastructure as such rather than to carbon intensity.

A serious affordability agenda reduces litigation risk across the entire dispatchable portfolio. It does not pick winners; it stops the process itself from picking losers.

10 Recommendations

1

Establish federal primacy over interstate greenhouse gas liability.

Congress should confirm that the Clean Air Act occupies the field for emissions crossing state lines and foreclose state-law damages claims and retroactive assessments premised on global emissions. This is the core of the Stop Climate Shakedowns Act and the logical extension of *West Virginia v. James*.

2

Prohibit retroactive liability for conduct that was lawful when it occurred.

Whatever one's view of prospective carbon policy, assessing companies today for lawful production in 1995 is a due process and fair notice problem before it is an energy policy problem. Furthermore, it completely misses the alleged target of current marginal production/consumption.

3

Require fiscal impact analysis on consumer prices.

Any state considering a superfund assessment should be required to publish an independent estimate of the effect on retail fuel and electricity prices in that state, using the sectoral allocation method described in Section 5 or something similar, before a floor vote. Legislators voting for a $50 billion assessment should have to acknowledge on the record what it means for a household budget.

4

Reform permitting and environmental review across all generation technologies,

applied evenly to gas, coal, nuclear, transmission, and renewables. Statutory deadlines for NEPA review, page limits, expanded categorical exclusions, limits on serial challenges to completed reviews, and a defined statute of limitations on collateral attack.

5

Accelerate nuclear licensing specifically.

Full implementation of the ADVANCE Act, generic environmental impact statements for standardized designs, an expedited pathway for reactors sited at existing nuclear or retiring fossil facilities, and finality in contested adjudications.

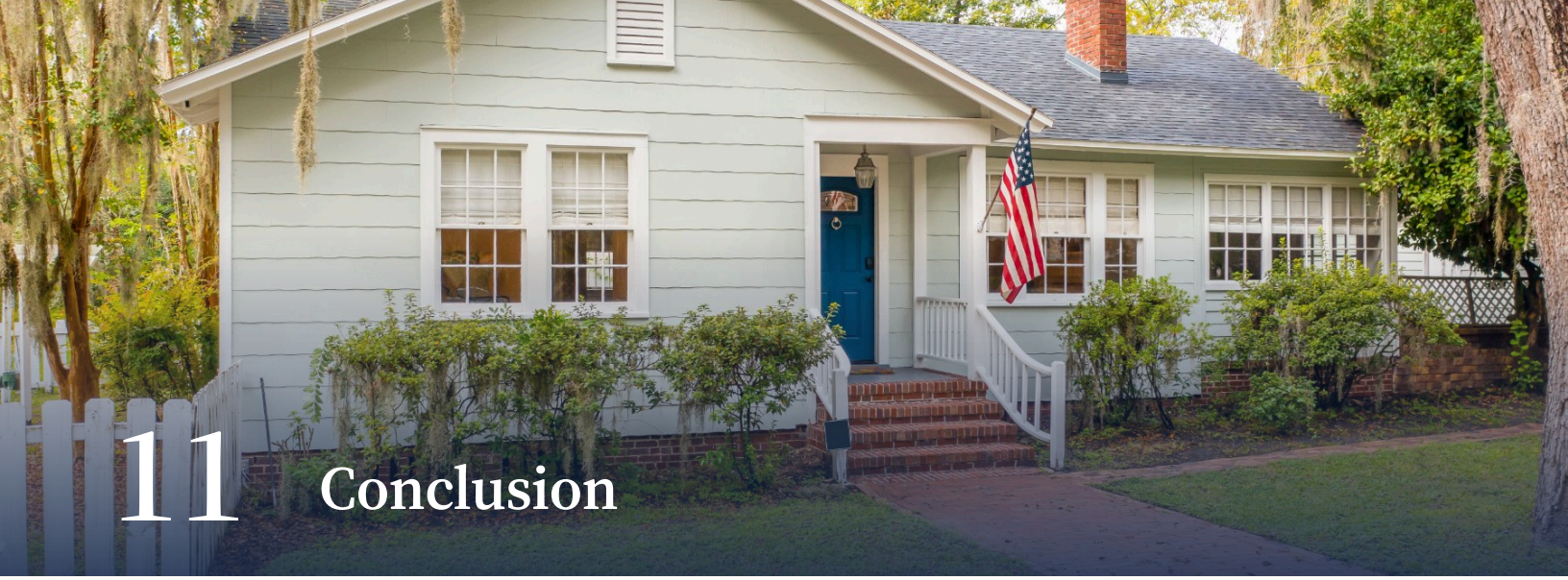
6

Address adaptation funding honestly.

Coastal resilience, stormwater capacity, grid hardening, and wildfire mitigation are legitimate public investments. They should be funded through appropriations debated and voted on by the legislatures that want them—visible, bounded, and accountable to the voters who pay for them.

"The question of who bears the cost of climate adaptation is a question for Congress, resolved prospectively and uniformly, not for fifty legislatures and several hundred trial courts resolved retroactively and inconsistently."

SECTION 8.4



11 Conclusion

The campaign analyzed in this paper is unusual in American policymaking: a program with a plausible nine-to-thirteen-figure cost, assembled almost entirely outside the appropriations process, defended on the claim that it costs consumers nothing.

That claim cannot be sustained. The fixed-cost argument depends on treating a coordinated, multi-jurisdiction, expressly replicable liability regime as an unrepeatable historical accident. It depends on competitors who are not themselves assessed. It depends on ignoring the regulated ratemaking process through which utility costs are recovered by design. And in the limiting case where the burden truly does fall on equity, it falls on the pension funds and retirement accounts of the same households the policy claims to protect.

If every measure examined here succeeded on its stated terms, the recurring burden on the American energy system would likely be somewhere between $165 billion and $280 billion annually—a central estimate of $1,465 per household per year, roughly 41 cents on a gallon of fuel and 1.5 cents on a kilowatt-hour. If courts were to anchor damages on attribution modeling rather than recorded losses, Section 6 shows the figure is several times larger. This arrives on top of electricity prices already rising at more than twice the rate of inflation, in an economy where one household in six is behind on an energy bill.

None of this argues against adaptation investment, and none of it depends on any particular view of climate science. It argues that the cost of adaptation should be raised the way a representative democracy raises public funds—through legislatures that must name the number, defend it, and face the voters who pay it. The alternative on offer is a carbon price no one voted for, set by courts that cannot weigh its economic consequences, collected from companies that will not ultimately bear it, and paid by households that were told they would not.

The constructive path is the opposite one: reduce the cost of building energy infrastructure across the board. Keep the existing dispatchable fleet running while demand grows. Improve and update the gas infrastructure the grid depends on. Remove the artificial constraints that have shuttered many coal power plants. Make nuclear licensing fast enough that new reactors are financeable. Fund resilience through appropriations. That is a policy framework that lowers emissions and household bills at the same time, instead of increasing costs without increasing a single drop of gasoline supply or kilowatt-hour of electricity supply.

$1,465
per household per year, central estimate — range $165B–$280B annually

41¢ · 1.5¢
on a gallon of fuel · on a kilowatt-hour

1 in 6
households already behind on an energy bill

APPENDIX A

Data Treatment and Deduplication

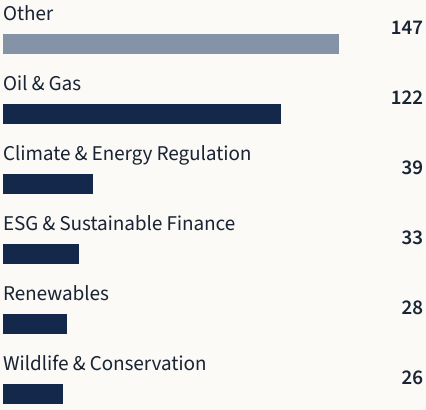
There are 395 observations spanning filing years 2024 through 2026, categorized across six policy areas: Oil & Gas (122), Climate & Energy Regulation (39), ESG & Sustainable Finance (33), Renewables (28), Wildlife & Conservation (26) and Other (147). Grouping by the underlying controversy reduces this to 311 distinct disputes. The 84 duplicate observations are distributed across 34 multi-observation clusters:

TABLE A1

Largest duplicate clusters

OBSERVATIONS	UNDERLYING DISPUTE
14	Challenge to the rule repealing the Affordable Clean Energy rule
8	Challenges to EPA's rescission of the 2009 endangerment finding
8	Challenges to the SEC climate-related disclosure rule
7	Consolidated greenwashing class actions — consumer paper products
6	Challenges to the freezing of Greenhouse Gas Reduction Fund awards
5	Challenges to Clean Air Act standards for the oil and gas source category
5	Challenges to EPA's waste emissions charge rule
4	Challenges to California's Delta Conveyance Project approval
4	Challenges to GHG standards for heavy-duty vehicles (Phase 3)
4	Challenges to MY2027 light-duty fuel economy standards
3 × 5 clusters	FERC gas compression authorizations; Texas proxy-advisor law; BLM Conservation and Landscape Health Rule; Solar for All termination; NY Route 33 project
2 × 19 clusters	Including NY superfund constitutionality, Bucks County, offshore wind stop-work orders, OCS withdrawal, tribal climate suits, and CAA preemption waivers

OBSERVATIONS BY POLICY AREA



Total observations	**395**
Distinct disputes	**311**
Duplicates, in 34 clusters	**84**

Counting observations rather than controversies would overstate the number of distinct legal controversies by approximately 21 percent. All figures in this paper use the deduplicated count.

The overwhelming majority of the authors' observed matters are regulatory challenges, statutory compliance suits, grant-termination disputes, and wildlife listing actions rather than damages claims against energy producers. The quantitative estimates in Section 5 are built only from the damages actions, the superfund statutes, and the federal bill.

Methodology and Limitations

B.1 Key parameters

PARAMETER	VALUE	SOURCE
U.S. households	**132.5 million**	EIA 2024 Residential Energy Consumption Survey
U.S. population	**≈340.1 million**	U.S. Census Bureau, 2024 estimate
U.S. end-use energy expenditures	**≈$1.70 trillion**	EIA State Energy Data System (2022, real)
Billion-dollar disaster losses, 2015–2024	**≈$1.4 trillion**	NOAA NCEI
Billion-dollar disaster losses, 2024	**$182.7 billion (27 events)**	NOAA NCEI
Residential electricity price	**≈17–18 ¢/kWh**	EIA, 2026
Low-income energy burden	**9.1% of income**	NEADA 2026 Energy Hardship Report
Sectoral CO_2 shares used for allocation	**Transport 38% · Electric 31% · Industrial 21% · Res/Com 10%**	EIA
Benchmark per-capita assessment rates	**NY $151 · MA $420 · NJ $263 · MD $58 per resident/yr**	Author, from statutory targets
Maryland disaster costs, 1980–2024	**$10–20 billion (85 events)**	Maryland Comptroller, April 2026 report
Plaintiff-jurisdiction population share	**30% central · 70% high**	Author, from jurisdictional record
Global attribution to largest producers	**$20T–$23.2T**	Climate Analytics; Grasso & Heede (2023)

B.2 Limitations

- This is a full-success scenario, not a forecast. It seeks to answer this or a similar question: “What would happen if the climate activists got everything they wanted?” *West Virginia v. James*, the Maryland Supreme Court's March 2026 ruling, and the pending decision in *Suncor v. Boulder* may sharply reduce realized exposure. Section 8.5 sets out the dismissal record in full.
- The litigation component scales with the share of U.S. population in a jurisdiction holding a live claim: 30 percent in the central case, net of dismissals. The high case uses 70 percent on the assumption that a favorable Supreme Court ruling revives dismissed claims and prompts new filings. Neither figure is observable directly; both are constructed from the jurisdictional record in Sections 2 and 8.5.
- The headline estimate is bounded by documented disaster losses rather than by pleaded demands, which are mostly unquantified. Section 6 sets out what attribution-based anchors would imply—roughly four times the central estimate. Disgorgement claims are assigned no value anywhere in the model.
- Eleven of fifteen state programs leave the assessment total to a study. Those totals are estimated from the per-capita rates implied by the three states that named a figure. Actual study outcomes could fall well outside that range in either direction—Vermont's uncapped statute in particular.

- Litigation recoveries are proxied by documented disaster losses in plaintiff jurisdictions. This is conservative: Multnomah County alone seeks $51.5 billion, which on a per-resident basis is approximately $63,000. Applied to the population of jurisdictions that have already filed, that benchmark implies exposure in the trillions. We do not use it, because a demand that large would not likely not even be paid—it would trigger liquidation and restructuring instead. But it illustrates that the underlying theory has no natural limiting principle.
- The estimate assumes full pass-through for comparability with published state-level modeling. Section 5.5 reports sensitivities. Under every parameterization tested, the household burden remains substantial and regressive.
- State liability shields enacted in Utah, Iowa, Oklahoma, and Tennessee, and the federal Stop Climate Shakedowns Act if enacted, would reduce exposure below even the low case. These are discussed in Section 8.5 but not modeled.
- Cumulative figures are nominal and undiscounted. Statutory installment mechanisms typically index to inflation, which raises nominal totals (especially so with the higher inflation rates seen since 2020); discounting to present value lowers them. The two effects partially offset.
- Maryland is included at the $9 billion contemplated by its 2024 RENEW Act, although the version actually enacted in 2025 mandates only a study. If Maryland's December 2026 study produces a larger figure—and the supporting record suggests it will—the successor bill would exceed this estimate. Post-2026 filings in other states are not included; additional states entering the field would increase the totals.
- Estimates for the eleven study-determined states are highly sensitive to which states are used as benchmarks. Excluding Maryland raises the median benchmark from $207 to $263 per resident per year and the central estimate by roughly $40 per household. The sevenfold dispersion among the four states that named a figure is the dominant source of uncertainty in Component A.

B.3 Principal sources

Authors' compilation of 395 catalogued actions from 2024–2026 including compilations of superfund statutes and bills. Statutory and judicial sources: 10 V.S.A. ch. 24A; N.Y. Climate Change Superfund Act; Md. RENEW Act / HB 128 & SB 149 (2025); *West Virginia v. James* (N.D.N.Y. Aug. 31, 2026); *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021); *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S., argued Oct. 5, 2026); S.25 and H.R.1135, 119th Congress. Data sources: EIA State Energy Data System; EIA Residential Energy Consumption Survey (2024); EIA Electric Power Monthly; NOAA National Centers for Environmental Information. Analytical sources: U.S. Chamber of Commerce Institute for Legal Reform state analyses (New Jersey, Minnesota, Massachusetts, New York); Jonathan Klick, "You Can't Tax the Past Without Pricing the Present" (SSRN, 2026); Buckeye Institute (April 2026); Institute for Policy Integrity and Fiscal Policy Institute (presenting the contrary position); NEADA 2026 Energy Hardship Report; Bipartisan Policy Center electricity affordability analysis; Columbia Center on Global Energy Policy and NRC rulemaking materials on nuclear licensing.

Prepared September 2026. Legal developments after that date are not reflected. Figures are estimates based on stated statutory targets and pleaded relief; they are not predictions of judicial outcomes and do not constitute legal or investment advice.

UNLEASH PROSPERITY

POWER THE FUTURE

WHO REALLY PAYS?

The Consumer Cost of Climate Litigation and "Climate Superfund" Legislation in the United States

E.J. Antoni

AUTHOR

Daniel Turner

AUTHOR

September 2026

Unleash Prosperity · Power The Future