117th CONGRESS  
1st Session 

S. ______

To impose an assessment related to fossil fuel emissions, to establish the Polluters Pay Climate Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Van Hollen (for himself, Mr. Sanders, Mr. Markey, Mr. Whitehouse, Ms. Warren, and Mr. Merkley) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To impose an assessment related to fossil fuel emissions, to establish the Polluters Pay Climate Fund, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Polluters Pay Climate
5 Fund Act of 2021”.
6 SEC. 2. FINDINGS.
7 Congress finds that—
8 (1) climate change, resulting primarily from the
9 combustion of fossil fuels, is an immediate, grave
threat to the communities, environment, and economy of the United States;

(2) severe consequences of climate change have already materialized and the United States must now take action to prevent further consequences, protect communities, and transition to clean energy sources;

(3) the consequences described in paragraph (2) include rising sea levels, increasing temperatures, extreme weather events, flooding, heat waves, loss of biodiversity, and other climate change-driven ecosystem threats;

(4) the Federal government jointly with States and localities must develop and implement protective measures to counteract the adverse effects of climate change;

(5) the protective measures necessary to mitigate the adverse effects of climate change and help expedite the transition away from fossil fuels will require new investment in the trillions of dollars during the two decades after the date of enactment of this Act;

(6) peer-reviewed research can now determine with great accuracy the share of carbon dioxide and
methane released into the atmosphere by the operations and products of specific fossil fuel companies;

(7) the fossil fuel industry should now increase their contribution to government expenditures to protect the Nation from climate disaster; and

(8) this Act and assessments under this Act are not intended—

(A) to be a determination of fault; or

(B) to have any impact on the ability of any person to hold polluters accountable for harms caused.

SEC. 3. IMPOSITION OF ASSESSMENT FOR PAST FOSSIL FUEL EMISSIONS.

(a) IMPOSITION.—

(1) IN GENERAL.—Each assessable person shall pay to the Secretary of the Treasury not later than the annual payment date for each of calendar years 2022 through 2031 an assessment in an amount determined under subsection (b).

(2) ANNUAL PAYMENT DATE.—For purposes of this section, the term “annual payment date” means with respect to any calendar year the date determined by the Secretary, but in no event later than September 30 of such calendar year.

(b) DETERMINATION OF AMOUNT.—
(1) IN GENERAL.—With respect to each assessable person, the assessment under this section for any calendar year shall be equal to an amount that bears the same ratio to $50,000,000,000 as—

(A) the assessable person’s applicable share of covered carbon dioxide and methane emissions, bears to

(B) the aggregate covered carbon dioxide and methane emissions of all assessable entities which are required to pay an assessment under this section for such calendar year.

(2) DETERMINATION OF APPLICABLE SHARE.—

(A) IN GENERAL.—The applicable share of covered carbon dioxide and methane emissions for any assessable person shall be determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, based on publicly-reported data on the operations and production of the fossil fuel industry.

(B) ADJUSTMENT.—The Secretary may adjust the applicable share of covered carbon dioxide and methane emissions for an assessable person who is described in subsection (c)(3)(A)(ii)(II) (or who is a successor in inter-
est to a person described in such subsection) if such person establishes to the satisfaction of the Secretary that a portion of such applicable share was—

(i) attributable to the extraction of petroleum by another assessable person who is described in subsection (c)(3)(A)((ii)(I) (or a successor in interest to a person described in such subsection), and

(ii) taken into account in determining the applicable share of covered carbon dioxide and methane emissions of such other assessable person.

(e) Assessable Person.—For purposes of this section—

(1) In General.—The term “assessable person” means—

(A) any person that is described in paragraph (3), or

(B) any successor in interest to a person described in paragraph (3).

(2) Exception.—The term “assessable person” shall not include any person determined by the Secretary to be in financial distress for the calendar
year with respect to which the assessment under this section is imposed.

(3) PERSON DESCRIBED.—

(A) IN GENERAL.—A person is described in this paragraph if such person—

(i) is a United States person or is engaged in a trade or business within the United States during the calendar year with respect to which the assessment under this section is imposed,

(ii) during the covered period, was engaged in the trade or business of—

(I) extracting any fossil fuel that meets the requirement of subparagraph (B), or

(II) refining any petroleum that meets the requirements of subparagraph (B), and

(iii) is determined by the Secretary to be responsible for at least 0.05 percent of the total global carbon dioxide and methane released into the atmosphere during the covered period by persons that, during the covered period, were engaged in the
trade or business of extracting fossil fuels
or refining petroleum.

(B) REQUIREMENT.—The requirements of
this subparagraph are met if—

(i) the intended use of the fossil fuel
or petroleum would have resulted in the re-
lease of carbon dioxide or methane into the
atmosphere in quantities that have contrib-
uted significantly to climate change, and

(ii) such use could reasonably have
been foreseen to be within the United
States.

(C) FOSSIL FUEL.—For purposes of this
paragraph, the term “fossil fuel” means coal,
petroleum products, and fuel gases.

(D) PETROLEUM.—For purposes of this
paragraph, the term “petroleum” means oil or
petroleum of any kind and in any form, includ-
ing fuel oil, oil sludge, oil refuse, oil mixed with
other wastes and crude oils, gasoline, and ker-
osene.

(4) CONTROLLED GROUPS.—

(A) IN GENERAL.—For purposes of this
subsection, all persons treated as a single em-
ployer under subsection (a) or (b) of section 52
of the Internal Revenue Code of 1986 or subsection (m) or (o) of section 414 of such Code shall be treated as a single assessable person.

(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 of such Code to this section, section 1563 of such Code shall be applied without regard to subsection (b)(2)(C) thereof.

(5) JOINT AND SEVERAL LIABILITY.—If more than one person is liable for payment of the assessment under subsection (a) with respect to a single assessable person by reason of the application of paragraph (3), all such persons shall be jointly and severally liable for payment of such assessment.

(d) OTHER DEFINITIONS.—

(1) COVERED CARBON DIOXIDE AND METHANE EMISSIONS.—The term “covered carbon dioxide and methane emissions” means, with respect to any calendar year, the total quantity of carbon dioxide and methane released into the atmosphere during the covered period by all assessable entities which are required to pay an assessment under this section for such calendar year.
(2) COVERED PERIOD.—The term “covered period” means the period that—

(A) began on January 1, 2000, and

(B) ended on December 31, 2019.

(3) SECRETARY.—The term “Secretary” includes the Secretary’s delegate.

(e) TAX TREATMENT OF ASSESSMENTS.—The assessments imposed by this section—

(1) for purposes of subtitle F of the Internal Revenue Code of 1986, shall be treated as excise taxes with respect to which only civil actions for refund under procedures of such subtitle shall apply, and

(2) for purposes of section 275 of such Code, shall be considered to be a tax described in section 275(a)(6).

(f) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate such regulations as are necessary to carry out this section, including regulations relating to—

(1) registering assessable persons;

(2) adopting methodologies that use the best available public information to determine assessable persons and applicable shares of covered carbon dioxide and methane emissions under subsection (b);
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(3) issuing notices of assessment under this sec-

(4) establishing criteria for determining wheth-

(5) accepting payments from, and pursuing col-

SEC. 4. POLLUTER PAYS CLIMATE CHANGE FUND.

(a) Establishment.—There is established in the

Treasury of the United States a revolving fund, to be

known as the “Polluters Pay Climate Fund” (hereinafter

in this section referred to as the “Fund”), consisting of

amounts as are appropriated to the Fund under sub-

section (b).

(b) Transfers.—There are hereby appropriated to

the Fund amounts equivalent to the assessments received

in the Treasury under section 3.

(c) Expenditures From the Fund.—

(1) In general.—Subject to paragraph (2),

amounts in the Fund shall be available, as provided

in appropriations Acts, for purposes of furthering a

comprehensive response to climate change.

(2) Priority.—Not less than 40 percent of

amounts appropriated from the Fund shall be di-
rected towards environmental justice communities facing climate impacts.

(d) ENVIRONMENTAL JUSTICE COMMUNITY.—For purposes of this section—

(1) IN GENERAL.—The term “environmental justice community” means a low-income or low-wealth community facing environmental injustice.

(2) INCLUSIONS.—Such term includes any community that—

(A) is located near an existing area of grave environmental pollution and degradation;

(B) bears a burden of negative public health effects of pollution;

(C) includes one or more—

(i) facilities that are part of a polluting industry;

(ii) waste dumps; or

(iii) facilities for resource extraction;

(D) experiences a high incidence of climate change impacts and disasters;

(E) has been excluded or harmed by racist or discriminatory policies that have resulted in economic, environmental, or health disparities;
(F) has a land-based or food subsidence culture that is experiencing ecosystem disruption and devastation;

(G) faces relocation and resettlement resulting from—

(i) climate change;

(ii) impacts to the environment and ecosystems; or

(iii) impacts associated with economic inequities related to climate change; or

(H) is an indigenous community.

SEC. 5. AVAILABILITY OF REMEDIES.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act shall be construed to relieve any person from liability at common law or under any State or Federal law.

(b) EFFECT ON CLAIMS RELATED TO CLIMATE CHANGE.—Nothing in this Act, the Clean Air Act (42 U.S.C. 7401 et seq.), or Federal common law preempts, displaces, or restricts any right or remedy of any person, State, unit of local government, or Tribal government under any State or local law (including common law) relating to an allegation of—

(1) deception concerning the effects of fossil fuel on climate change;
(2) damage or injury resulting from the role of fossil fuel in contributing to climate change; or
(3) the failure to avoid damage or injury related to climate change, including claims for nuisance, trespass, design defect, negligence, failure to warn, or deceptive or unfair practices and claims for injunctive, declaratory, monetary, or other relief.

SEC. 6. NON-PREEMPTION OF AUTHORITIES.

Nothing in this Act or the amendments made by this Act shall be construed to preempt or supersede any State or local law, regulation, policy, or program, including laws, regulations, polices, and programs that—
(1) limit, set, or enforce standards for greenhouse gas emissions;
(2) monitor, report, and keep records of greenhouse gas emissions; or
(3) conduct or support investigations.