

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. WHITE-
HOUSE, 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

1 threat to the communities, environment, and econ-
2 omy of the United States;

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

8 (3) the consequences described in paragraph (2)
9 include rising sea levels, increasing temperatures, ex-
10 treme weather events, flooding, heat waves, loss of
11 biodiversity, and other climate change-driven eco-
12 system threats;

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

17 (5) the protective measures necessary to miti-
18 gate the adverse effects of climate change and help
19 expedite the transition away from fossil fuels will re-
20 quire new investment in the trillions of dollars dur-
21 ing the two decades after the date of enactment of
22 this Act;

23 (6) peer-reviewed research can now determine
24 with great accuracy the share of carbon dioxide and

1 methane released into the atmosphere by the oper-
2 ations and products of specific fossil fuel companies;

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

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

8 (A) to be a determination of fault; or

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

12 **SEC. 3. IMPOSITION OF ASSESSMENT FOR PAST FOSSIL**
13 **FUEL EMISSIONS.**

14 (a) IMPOSITION.—

15 (1) IN GENERAL.—Each assessable person shall
16 pay to the Secretary of the Treasury not later than
17 the annual payment date for each of calendar years
18 2022 through 2031 an assessment in an amount de-
19 termined under subsection (b).

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

25 (b) DETERMINATION OF AMOUNT.—

1 (1) IN GENERAL.—With respect to each assess-
2 able person, the assessment under this section for
3 any calendar year shall be equal to an amount that
4 bears the same ratio to \$50,000,000,000 as—

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

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

12 (2) DETERMINATION OF APPLICABLE SHARE.—

13 (A) IN GENERAL.—The applicable share of
14 covered carbon dioxide and methane emissions
15 for any assessable person shall be determined
16 by the Secretary, in consultation with the Ad-
17 ministrators of the Environmental Protection
18 Agency, based on publicly-reported data on the
19 operations and production of the fossil fuel in-
20 dustry.

21 (B) ADJUSTMENT.—The Secretary may
22 adjust the applicable share of covered carbon
23 dioxide and methane emissions for an assess-
24 able person who is described in subsection
25 (c)(3)(A)(ii)(II) (or who is a successor in inter-

1 est to a person described in such subsection) if
2 such person establishes to the satisfaction of
3 the Secretary that a portion of such applicable
4 share was—

5 (i) attributable to the extraction of pe-
6 troleum by another assessable person who
7 is described in subsection (c)(3)(A)((ii)(I)
8 (or a successor in interest to a person de-
9 scribed in such subsection), and

10 (ii) taken into account in determining
11 the applicable share of covered carbon di-
12 oxide and methane emissions of such other
13 assessable person.

14 (c) ASSESSABLE PERSON.—For purposes of this sec-
15 tion—

16 (1) IN GENERAL.—The term “assessable per-
17 son” means—

18 (A) any person that is described in para-
19 graph (3), or

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

22 (2) EXCEPTION.—The term “assessable per-
23 son” shall not include any person determined by the
24 Secretary to be in financial distress for the calendar

1 year with respect to which the assessment under this
2 section is imposed.

3 (3) PERSON DESCRIBED.—

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

6 (i) is a United States person or is en-
7 gaged in a trade or business within the
8 United States during the calendar year
9 with respect to which the assessment under
10 this section is imposed,

11 (ii) during the covered period, was en-
12 gaged in the trade or business of—

13 (I) extracting any fossil fuel that
14 meets the requirement of subpara-
15 graph (B), or

16 (II) refining any petroleum that
17 meets the requirements of subpara-
18 graph (B), and

19 (iii) is determined by the Secretary to
20 be responsible for at least 0.05 percent of
21 the total global carbon dioxide and meth-
22 ane released into the atmosphere during
23 the covered period by persons that, during
24 the covered period, were engaged in the

1 trade or business of extracting fossil fuels
2 or refining petroleum.

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

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

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

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

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

22 (4) CONTROLLED GROUPS.—

23 (A) IN GENERAL.—For purposes of this
24 subsection, all persons treated as a single em-
25 ployer under subsection (a) or (b) of section 52

1 of the Internal Revenue Code of 1986 or sub-
2 section (m) or (o) of section 414 of such Code
3 shall be treated as a single assessable person.

4 (B) INCLUSION OF FOREIGN CORPORA-
5 TIONS.—For purposes of subparagraph (A), in
6 applying subsections (a) and (b) of section 52
7 of such Code to this section, section 1563 of
8 such Code shall be applied without regard to
9 subsection (b)(2)(C) thereof.

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

16 (d) OTHER DEFINITIONS.—

17 (1) COVERED CARBON DIOXIDE AND METHANE
18 EMISSIONS.—The term “covered carbon dioxide and
19 methane emissions” means, with respect to any cal-
20 endar year, the total quantity of carbon dioxide and
21 methane released into the atmosphere during the
22 covered period by all assessable entities which are
23 required to pay an assessment under this section for
24 such calendar year.

1 (2) COVERED PERIOD.—The term “covered pe-
2 riod” means the period that—

3 (A) began on January 1, 2000, and

4 (B) ended on December 31, 2019.

5 (3) SECRETARY.—The term “Secretary” in-
6 cludes the Secretary’s delegate.

7 (e) TAX TREATMENT OF ASSESSMENTS.—The as-
8 sessments imposed by this section—

9 (1) for purposes of subtitle F of the Internal
10 Revenue Code of 1986, shall be treated as excise
11 taxes with respect to which only civil actions for re-
12 fund under procedures of such subtitle shall apply,
13 and

14 (2) for purposes of section 275 of such Code,
15 shall be considered to be a tax described in section
16 275(a)(6).

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

21 (1) registering assessable persons;

22 (2) adopting methodologies that use the best
23 available public information to determine assessable
24 persons and applicable shares of covered carbon di-
25 oxide and methane emissions under subsection (b);

1 (3) issuing notices of assessment under this sec-
2 tion;

3 (4) establishing criteria for determining wheth-
4 er an assessable person is in financial distress for
5 purposes of subsection (c)(2); and

6 (5) accepting payments from, and pursuing col-
7 lection efforts against, assessable persons.

8 **SEC. 4. POLLUTER PAYS CLIMATE CHANGE FUND.**

9 (a) **ESTABLISHMENT.**—There is established in the
10 Treasury of the United States a revolving fund, to be
11 known as the “Polluters Pay Climate Fund” (hereinafter
12 in this section referred to as the “Fund”), consisting of
13 amounts as are appropriated to the Fund under sub-
14 section (b).

15 (b) **TRANSFERS.**—There are hereby appropriated to
16 the Fund amounts equivalent to the assessments received
17 in the Treasury under section 3.

18 (c) **EXPENDITURES FROM THE FUND.**—

19 (1) **IN GENERAL.**—Subject to paragraph (2),
20 amounts in the Fund shall be available, as provided
21 in appropriations Acts, for purposes of furthering a
22 comprehensive response to climate change.

23 (2) **PRIORITY.**—Not less than 40 percent of
24 amounts appropriated from the Fund shall be di-

1 rected towards environmental justice communities
2 facing climate impacts.

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

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

8 (2) INCLUSIONS.—Such term includes any com-
9 munity that—

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

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

14 (C) includes one or more—

15 (i) facilities that are part of a pol-
16 luting industry;

17 (ii) waste dumps; or

18 (iii) facilities for resource extraction;

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

21 (E) has been excluded or harmed by racist
22 or discriminatory policies that have resulted in
23 economic, environmental, or health disparities;

1 (F) has a land-based or food subsistence
2 culture that is experiencing ecosystem disrup-
3 tion and devastation;

4 (G) faces relocation and resettlement re-
5 sulting from—

6 (i) climate change;

7 (ii) impacts to the environment and
8 ecosystems; or

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

11 (H) is an indigenous community.

12 **SEC. 5. AVAILABILITY OF REMEDIES.**

13 (a) IN GENERAL.—Nothing in this Act or the amend-
14 ments made by this Act shall be construed to relieve any
15 person from liability at common law or under any State
16 or Federal law.

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

24 (1) deception concerning the effects of fossil
25 fuel on climate change;

1 (2) damage or injury resulting from the role of
2 fossil fuel in contributing to climate change; or

3 (3) the failure to avoid damage or injury re-
4 lated to climate change, including claims for nui-
5 sance, trespass, design defect, negligence, failure to
6 warn, or deceptive or unfair practices and claims for
7 injunctive, declaratory, monetary, or other relief.

8 **SEC. 6. NON-PREEMPTION OF AUTHORITIES.**

9 Nothing in this Act or the amendments made by this
10 Act shall be construed to preempt or supersede any State
11 or local law, regulation, policy, or program, including laws,
12 regulations, policies, and programs that—

13 (1) limit, set, or enforce standards for green-
14 house gas emissions;

15 (2) monitor, report, and keep records of green-
16 house gas emissions; or

17 (3) conduct or support investigations.