

118TH CONGRESS
2D SESSION

S. 5054

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

SEPTEMBER 12, 2024

Mr. VAN HOLLEN (for himself, Mr. SANDERS, Ms. WARREN, Mr. MARKEY,
Mr. MERKLEY, and Mr. WHITEHOUSE) introduced the following bill;
which was read twice and referred to the Committee on Finance

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 2024”.

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 in the United States, including
5 rising sea levels, increasing temperatures, extreme
6 weather events, flooding, heat waves, loss of bio-
7 diversity, and other climate change-driven ecosystem
8 threats;

9 (3) the Federal Government jointly with States
10 and localities must develop and implement protective
11 measures to counteract the adverse effects of climate
12 change, protect communities, and build resilience to
13 extreme weather;

14 (4) the government response must include pro-
15 tections for communities that are most vulnerable to
16 climate change impacts, especially communities of
17 color, low-income communities, and Tribal and In-
18 digenous communities that are also more likely to
19 have experienced systemic disinvestment and be
20 overburdened by fossil fuel pollution;

21 (5) the protective measures necessary to re-
22 spond to the adverse effects of climate change in the
23 United States will require trillions of dollars of new
24 investment during the decade after the date of en-
25 actment of this Act;

1 (6) climate change related extreme weather
2 events, such as those described in paragraph (2),
3 cost the United States at least \$150,000,000,000
4 each year and disproportionately affect underserved
5 and overburdened communities, according to the
6 Fifth National Climate Assessment;

7 (7) the \$100,000,000,000 each year that fossil
8 fuel companies are collectively assessed for the Pol-
9 luters Pay Climate Fund established in this Act rep-
10 resents only a small portion of the total cost to the
11 Federal Government to respond to climate change
12 related extreme weather events and make needed cli-
13 mate change adaptation and resilience investments;

14 (8) peer-reviewed research can now determine
15 with great accuracy the share of carbon dioxide re-
16 leased into the atmosphere by the operations and
17 products of specific fossil fuel companies, which is
18 what informs the formulas to determine carbon diox-
19 ide emissions that are used in the amendments made
20 by this Act;

21 (9) the fossil fuel industry has been aware of
22 the central role that their product plays in causing
23 climate change since before the year 2000;

1 (10) the fossil fuel industry must now increase
 2 their contribution to government expenditures to
 3 protect the Nation from climate disaster; and

4 (11) this Act and assessments under the
 5 amendments made by this Act are not intended—

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

7 (B) to have any impact on the ability of
 8 any person or other government to hold pol-
 9 luters accountable for harms caused.

10 **SEC. 3. TAX RELATING TO CURRENT STOCK OF GREEN-**
 11 **HOUSE GAS EMISSIONS.**

12 (a) IN GENERAL.—Chapter 38 of the Internal Rev-
 13 enue Code of 1986 is amended by adding at the end the
 14 following new subchapter:

15 **“Subchapter E—Certain Fossil Fuel**
 16 **Emissions**

“Sec. 4691. Imposition of tax.

17 **“SEC. 4691. IMPOSITION OF TAX.**

18 “(a) IMPOSITION.—Each assessable person shall pay
 19 to the Secretary of the Treasury not later than the appli-
 20 cable payment date a tax in an amount determined under
 21 subsection (b).

22 “(b) DETERMINATION OF AMOUNT.—

23 “(1) IN GENERAL.—With respect to each as-
 24 sessable person, the tax under this section shall be

1 equal to an amount that bears the same ratio to
 2 \$1,000,000,000,000 as—

3 “(A) the assessable person’s applicable
 4 share of covered carbon dioxide emissions taken
 5 into account under this section, bears to

6 “(B) the aggregate applicable shares of
 7 covered carbon dioxide emissions of all assess-
 8 able persons taken into account under this sec-
 9 tion.

10 “(2) DETERMINATION OF APPLICABLE
 11 SHARE.—

12 “(A) IN GENERAL.—The applicable share
 13 of covered carbon dioxide emissions taken into
 14 account under this section for any assessable
 15 person shall be the excess (if any) of—

16 “(i) the covered carbon dioxide emis-
 17 sions attributable to such person (deter-
 18 mined in metric tons), as determined by
 19 the Secretary based on product-related car-
 20 bon dioxide emissions of such person, over

21 “(ii) 1,000,000,000 metric tons.

22 “(B) ADJUSTMENT.—The Secretary may
 23 adjust the amount determined under subpara-
 24 graph (A)(i) with respect to an assessable per-
 25 son who is described in subsection (c)(2)(B)(ii)

(or who is a successor in interest to a person described in such subsection) if such person establishes to the satisfaction of the Secretary that a portion of such amount was—

“(i) attributable to the extraction of crude oil by another assessable person who is described in subsection (c)(2)(B)(i) (or a successor in interest to a person described in such subsection), and

“(ii) taken into account in determining such amount for such other assessable person.

“(c) ASSESSABLE PERSON.—For purposes of this section—

“(1) IN GENERAL.—The term ‘assessable person’ means—

“(A) any person that is described in paragraph (2), or

“(B) any successor in interest to a person described in paragraph (2).

“(2) PERSON DESCRIBED.—A person is described in this paragraph if such person—

“(A) is a United States person or is engaged in a trade or business within the United States during the period beginning on the date

1 of the enactment of this Act and ending on De-
 2 cember 31, 2024,

3 “(B) during any part of the covered pe-
 4 riod, was engaged in the trade or business of—

5 “(i) extracting any fossil fuel, or

6 “(ii) refining any crude oil, and

7 “(C) is determined by the Secretary to be
 8 responsible for more than 1,000,000,000 metric
 9 tons of covered carbon dioxide emissions.

10 “(3) CONTROLLED GROUPS.—

11 “(A) IN GENERAL.—For purposes of this
 12 subsection, all persons treated as a single em-
 13 ployer under subsection (a) or (b) of section 52
 14 or subsection (m) or (o) of section 414 shall be
 15 treated as a single assessable person.

16 “(B) INCLUSION OF FOREIGN CORPORA-
 17 TIONS.—For purposes of subparagraph (A), in
 18 applying subsections (a) and (b) of section 52
 19 to this section, section 1563 shall be applied
 20 without regard to subsection (b)(2)(C) thereof.

21 “(4) JOINT AND SEVERAL LIABILITY.—If more
 22 than one person is liable for payment of the tax
 23 under subsection (a) with respect to a single assess-
 24 able person by reason of the application of para-

1 graph (3), all such persons shall be jointly and sev-
 2 erally liable for payment of such tax.

3 “(d) OTHER DEFINITIONS AND RULES.—For pur-
 4 poses of this section—

5 “(1) APPLICABLE PAYMENT DATE.—The term
 6 ‘applicable payment date’ means September 30,
 7 2025.

8 “(2) COVERED CARBON DIOXIDE EMISSIONS.—
 9 The term ‘covered carbon dioxide emissions’ means,
 10 with respect to any person, the total quantity of car-
 11 bon dioxide released into the atmosphere during the
 12 covered period by reason such person engaging in
 13 the trade or business of extracting fossil fuels or of
 14 refining crude oil.

15 “(3) COVERED PERIOD.—The term ‘covered pe-
 16 riod’ means the period that—

17 “(A) began on January 1, 2000, and

18 “(B) ended on December 31, 2022.

19 “(4) FOSSIL FUEL.—The term ‘fossil fuel’
 20 means coal, crude oil, and fuel gases.

21 “(5) COAL.—The term ‘coal’ means anthracite,
 22 bituminous, subbituminous, and lignite coal.

23 “(6) CRUDE OIL.—The term ‘crude oil’ means
 24 oil or petroleum of any kind and in any form, includ-
 25 ing bitumen, oil sands, heavy oil, conventional and

1 unconventional oil, shale oil, natural gas liquids, con-
 2 densates, and related fossil fuel liquids.

3 “(7) FUEL GASES.—The term ‘fuel gases’
 4 means natural gas, associated natural gas, conven-
 5 tional and unconventional gas, shale gas, and related
 6 methane gas production.

7 “(8) DETERMINATION OF CARBON DIOXIDE
 8 EMISSIONS.—In determining the amount of carbon
 9 dioxide emissions with respect to any assessable per-
 10 son—

11 “(A) an amount equivalent to 942.5 metric
 12 tons of carbon dioxide shall be treated as re-
 13 leased for every 1,000,000 pounds of coal,

14 “(B) an amount equivalent to 432,180
 15 metric tons of carbon dioxide shall be treated as
 16 released for every 1,000,000 barrels of crude
 17 oil, and

18 “(C) an amount equivalent to 54,440 met-
 19 ric tons of carbon dioxide shall be treated as re-
 20 leased for every 1,000,000,000 cubic feet of fuel
 21 gases.

22 “(e) ELECTION TO PAY LIABILITY IN INSTALL-
 23 MENTS.—

1 “(1) IN GENERAL.—An assessable person may
2 elect to pay the tax under this section in 9 annual
3 installments of the following amounts:

4 “(A) 20 percent of the tax under this sec-
5 tion in the case of the first installment.

6 “(B) 10 percent of the tax under this sec-
7 tion in each of the following 8 installments.

8 “(2) DATE FOR PAYMENT OF INSTALLMENTS.—
9 If an election is made under paragraph (1), the first
10 installment shall be paid on the applicable payment
11 date and each succeeding installment shall be paid
12 on the same date as the applicable payment date for
13 each calendar year following the calendar year with
14 respect to which the preceding installment was
15 made.

16 “(3) ACCELERATION OF PAYMENT.—If there is
17 an addition to tax for failure to timely pay any in-
18 stallment required under this subsection, a liquida-
19 tion or sale of substantially all the assets of the as-
20 sessable person (including in a title 11 or similar
21 case), a cessation of business by the assessable per-
22 son, or any similar circumstance, then the unpaid
23 portion of all remaining installments shall be due on
24 the date of such event (or in the case of a title 11
25 or similar case, the day before the petition is filed).

1 The preceding sentence shall not apply to the sale
2 of substantially all the assets of an assessable person
3 to a buyer if such buyer enters into an agreement
4 with the Secretary under which such buyer is liable
5 for the remaining installments due under this sub-
6 section in the same manner as if such buyer were
7 the assessable person.

8 “(4) PRORATION OF DEFICIENCY TO INSTALL-
9 MENTS.—If an election is made under paragraph (1)
10 to pay the tax under this section in installments and
11 a deficiency has been assessed with respect to such
12 tax, the deficiency shall be prorated to the install-
13 ments payable under paragraph (1). The part of the
14 deficiency so prorated to any installment the date
15 for payment of which has not arrived shall be col-
16 lected at the same time as, and as a part of, such
17 installment. The part of the deficiency so prorated
18 to any installment the date for payment of which
19 has arrived shall be paid upon notice and demand
20 from the Secretary. This subsection shall not apply
21 if the deficiency is due to negligence, to intentional
22 disregard of rules and regulations, or to fraud with
23 intent to evade tax.

24 “(5) ELECTION.—Any election under paragraph
25 (1) shall be made not later than the applicable pay-

1 ment date and shall be made in such manner as the
2 Secretary shall provide.

3 “(6) INSTALLMENTS NOT TO PREVENT CREDIT
4 OR REFUND OF OVERPAYMENTS OR INCREASE ESTI-
5 MATED TAXES.—If an election is made under para-
6 graph (1) to pay the tax under this section in in-
7 stallments—

8 “(A) no installment of such tax shall—

9 “(i) in the case of a request for credit
10 or refund, be taken into account as a li-
11 ability for purposes of determining whether
12 an overpayment exists for purposes of sec-
13 tion 6402 before the date on which such
14 installment is due, or

15 “(ii) for purposes of sections 6425,
16 6654, and 6655, be treated as a tax im-
17 posed by section 1, section 11, or sub-
18 chapter L of chapter 1, and

19 “(B) the first sentence of section 6403
20 shall not apply with respect to any such install-
21 ment.

22 “(f) REGULATIONS.—Not later than 18 months after
23 the date of enactment of this section, the Secretary shall
24 promulgate such regulations as are necessary to carry out
25 this section.”.

1 (b) NO DEDUCTION.—Section 275(a) of such Code
 2 is amended by adding at the end the following new para-
 3 graph:

4 “(7) Taxes imposed by subchapter E of chapter
 5 38.”.

6 (c) CLERICAL AMENDMENT.—The table of sub-
 7 chapters for chapter 38 of such Code is amended by add-
 8 ing at the end the following new item:

“SUBCHAPTER E—CERTAIN FOSSIL FUEL EMISSIONS”.

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

10 (a) ESTABLISHMENT OF FUND.—

11 (1) IN GENERAL.—Subchapter A of chapter 98
 12 of the Internal Revenue Code of 1986 is amended by
 13 adding at the end the following new section:

14 **“SEC. 9512. POLLUTERS PAY CLIMATE FUND.**

15 “(a) ESTABLISHMENT.—There is established in the
 16 Treasury of the United States a trust fund, to be known
 17 as the ‘Polluters Pay Climate Fund’ (hereinafter in this
 18 section referred to as the ‘Fund’), consisting of amounts
 19 as are appropriated or credited to such Trust Fund as
 20 provided in this section and section 9602(b).

21 “(b) TRANSFERS.—There are hereby appropriated to
 22 the Fund amounts equivalent to the taxes received in the
 23 Treasury under section 4691.

24 “(c) EXPENDITURES FROM THE FUND.—Amounts in
 25 the fund shall be available, as provided in appropriations

1 Acts, for the purpose of making expenditures to carry out
 2 the purposes of section 4(b) of the Polluters Pay Climate
 3 Fund Act of 2024.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
 5 tions for subchapter A of chapter 98 of such Code
 6 is amended by adding at the end the following new
 7 item:

“Sec. 9512. Polluters Pay Climate Fund.”.

8 (b) EXPENDITURES FROM FUND.—

9 (1) DEFINITIONS.—In this subsection:

10 (A) ADMINISTRATOR.—The term “Admin-
 11 istrator” means the Administrator of the Envi-
 12 ronmental Protection Agency.

13 (B) ENVIRONMENTAL JUSTICE COMMU-
 14 NITY.—The term “environmental justice com-
 15 munity” means a community with significant
 16 representation of communities of color, low-in-
 17 come communities, or Tribal and Indigenous
 18 communities that experiences, or is at risk of
 19 experiencing, higher or more adverse human
 20 health or environmental effects as compared to
 21 other communities.

22 (C) FUND.—The term “Fund” means the
 23 Polluters Pay Climate Change Fund established
 24 under section 9512 of the Internal Revenue
 25 Code of 1986.

1 (D) SECRETARY.—The term “Secretary”
2 means the Secretary of the Treasury.

3 (2) USE OF FUND AMOUNTS.—

4 (A) GENERAL PURPOSES.—The Secretary,
5 in consultation with the Administrator and the
6 heads of other relevant agencies, shall use
7 amounts in the Fund for the purposes of fur-
8 thering a comprehensive and equitable Federal
9 response to climate change impacts through in-
10 vestments in climate resilience, adaptation, dis-
11 aster response, and environmental justice, in-
12 cluding—

13 (i) climate-related disaster recovery
14 and mitigation support;

15 (ii) climate change adaptation support
16 through climate and disaster planning as-
17 sistance, funding for climate-resilient infra-
18 structure, and improved climate and ex-
19 treme weather prediction capabilities;

20 (iii) initiatives that increase the cli-
21 mate resilience of energy systems through
22 energy efficiency, grid resilience, and dis-
23 tributed electricity generation initiatives;

24 (iv) initiatives that increase the cli-
25 mate resilience of the food system through

1 support for climate-resilient farming prac-
2 tices;

3 (v) initiatives that increase the cli-
4 mate resilience of the transportation sys-
5 tem through planning and climate change
6 adaptation support;

7 (vi) initiatives that increase the cli-
8 mate resilience of ecosystems through con-
9 servation, restoration, and wildfire man-
10 agement activities;

11 (vii) support for climate-related public
12 health initiatives, including efforts to ad-
13 dress extreme heat; and

14 (viii) initiatives that increase the cli-
15 mate resiliency of drinking water and
16 stormwater infrastructure.

17 (B) SPECIFIED USES.—In carrying out
18 subparagraph (A) each fiscal year and to the
19 greatest extent practicable, the Secretary shall
20 use amounts in the Fund—

21 (i) to provide funding of not less than
22 \$15,000,000,000 to the Federal Emer-
23 gency Management Agency for response
24 and resilience programs of the Federal
25 Emergency Management Agency to ad-

1 dress climate-related disasters, including
2 hurricanes, flooding, extreme heat, and
3 wildfires, of which not less than
4 \$3,000,000,000 shall be used to carry out
5 the Building Resilient Infrastructure and
6 Communities program under section 203
7 of the Robert T. Stafford Disaster Relief
8 and Emergency Assistance Act (42 U.S.C.
9 5133); and

10 (ii) to provide funding of not less than
11 \$6,000,000,000 for grants and technical
12 assistance under section 138 of the Clean
13 Air Act (42 U.S.C. 7438), subject to the
14 condition that the Administrator may de-
15 termine the appropriate amounts to be
16 used for those grants and that technical
17 assistance.

18 (C) ENVIRONMENTAL JUSTICE SET
19 ASIDE.—Of the amounts appropriated from the
20 Fund each fiscal year, 40 percent shall be used
21 for investments that benefit environmental jus-
22 tice communities.

23 (D) SELECTION.—For the purpose of de-
24 termining how to award amounts appropriated
25 from the Fund in excess of the amounts re-

1 quired to be used under subparagraph (B), the
2 Secretary, in coordination with the Adminis-
3 trator and the heads of other relevant agencies,
4 shall establish selection criteria, which shall give
5 the highest priority to projects or other activi-
6 ties that are most impactful in achieving the
7 purposes described in subparagraph (A), as de-
8 termined by the Secretary, in coordination with
9 the Administrator and the heads of other rel-
10 evant agencies.

11 **SEC. 5. AVAILABILITY OF REMEDIES.**

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

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

10 (1) require the repayment of any funds made
11 available from the Polluter Pays Climate Change
12 Fund established under section 9512 of the Internal
13 Revenue Code of 1986 and used pursuant to section
14 4(b) as a result of any award of damages imposed
15 by a court of law relating to any causes of action or
16 allegations described in subsection (b); or

17 (2) permit the use of any such funds—

18 (A) as evidence in such an action or allega-
19 tion; or

20 (B) to offset any award of damages in
21 such an action or allegation.

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

23 Nothing in this Act or the amendments made by this
24 Act shall be construed to preempt or supersede any State

- 1 or local law, regulation, policy, or program, including laws,
2 regulations, policies, and programs that—
- 3 (1) limit, set, or enforce standards for green-
4 house gas emissions;
 - 5 (2) monitor, report, and keep records of green-
6 house gas emissions;
 - 7 (3) provide cost recovery for climate adaptation,
8 mitigation, or resilience; or
 - 9 (4) conduct or support investigations.

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