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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2023 - 2024 Regular**

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<b>Bill No.</b>	SB 1497	<b>Hearing Date:</b>	4/17/2024
<b>Author:</b>	Menjivar		
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<b>Urgency:</b>	Yes	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Eric Walters		

**SUBJECT:** Polluters Pay Climate Cost Recovery Act of 2024

**DIGEST:** This bill would task the California Environmental Protection Agency with preparing a climate cost study to quantify the cost to the state of all impacts of climate change through 2045; assessing the portion of that cost attributable to greenhouse gas (GHG) emissions between the years of 2000 and 2020; prorating that cost proportionally across responsible parties, as defined, whose products led to GHG emissions during that range; collecting climate cost recovery payments from responsible parties; and administering a fund comprised of those payments to be used for qualifying expenses related to responding to climate change.

**ANALYSIS:**

Existing federal law:

- 1) Creates, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (USC) § 9601 et seq.)

Existing state law:

- 1) Requires the California Air Resources Board (CARB) to approve a statewide greenhouse gas (GHG) emissions limit equivalent to the statewide GHG emissions level in 1990 to be achieved by 2020 (AB 32, 2006) and to ensure that statewide GHGs are reduced to at least 40% below the 1990 level by 2030 (SB 32, 2016).
- 2) States, under the California Climate Crisis Act—AB 1279 (Muratsuchi, Chapter 337, Statutes of 2022), that it is the policy of the state to achieve net zero GHG emissions no later than 2045, and to ensure that by 2045 statewide

anthropogenic GHG emissions are reduced to at least 85% below the 1990 level.

- 3) Defines “greenhouse gas” to include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride. (Health and Safety Code (HSC) § 38505)
- 4) Establishes the Greenhouse Gas Reduction Fund (GGRF) to receive the moneys raised through the auction of allowances under cap-and-trade, and to be appropriated annually by the Legislature for the purpose of reducing GHG emissions in the state. (HSC § 39719)

This bill, the Polluters Pay Climate Cost Recovery Act of 2024:

- 1) Defines pertinent terms for the purposes of the Act, including but not limited to:
  - a) “Climate cost study” to mean a study conducted pursuant to Section 71371.3 to establish the quantifiable costs to the state from climate change;
  - b) “Covered fossil fuel emissions” to mean the quantity of GHGs released into the atmosphere during the covered period (2000-2020), expressed in metric tons of carbon dioxide equivalent (MTCO<sub>2e</sub>), resulting from the extraction, production, refining, or sale of fossil fuels or petroleum products;
  - c) “Covered period damage amount” to mean the portion of the total damage amount fairly and reasonably attributable to covered fossil fuel emissions;
  - d) “Greenhouse gas” to mean a chemical or physical substance that is emitted into the air and that the agency may reasonably anticipate is causing or contributing to climate change, including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride;
  - e) “Responsible party” to mean an entity, including, but not limited to, an individual, trustee, agent, partnership, association, corporation, or other legal organization that holds or held a majority ownership interest in a fossil fuel business during the covered period, or a successor in interest to the entity, that, during any part of the covered period, did business in the state or otherwise had sufficient contact with the state to satisfy the due process requirements of the United States Constitution and is determined by the agency to be responsible for more than one billion metric tons of covered fossil fuel emissions, in aggregate globally, during the covered period; and
  - f) “Total damage amount” to mean the monetary amount determined by California

- g) Environmental Protection Agency (CalEPA) in its climate cost study that quantifies all past and future climate harms and damages to the state through December 31, 2045.
- 2) Establishes the Polluters Pay Climate Cost Recovery Program (“Program”) to be administered by CalEPA.
  - 3) States that a responsible party shall be liable for a cost recovery demand to remedy damages caused to the state by their fossil fuel emissions 2000-2020, and beginning paying the cost recovery demand beginning January 1, 2025.
  - 4) Requires CalEPA to:
    - a) Within 90 days of the effective date of the legislation, determine and publish a list of responsible parties.
    - b) Within one year of the effective date of the legislation, complete a climate cost study, as specified, to quantify the costs incurred by the state as a result of climate change, including but not limited to a determination of the total damage amount.
    - c) Within 60 days of the completion of the cost study, determine and assess a cost recovery demand for each responsible party, and stipulates that the cost recovery demand be calculated by:
      - i) Quantifying the fossil fuel emissions of each responsible party;
      - ii) Establishing the proportionate share percentage of each responsible party by dividing its GHG emissions by worldwide total GHG emissions for years 2000-2020;
      - iii) Determining the portion of the total damage amount that is attributable to worldwide 2000-2020 GHG emissions; and
      - iv) Multiplying the portion of total emissions contributed by a responsible party by the damage amount attributable to 2000-2020 emissions to arrive at a proportional cost recovery demand for each responsible party.
    - d) Within 60 days of the completion of the cost study, notify responsible parties of their cost recovery demand, and permits responsible parties to pay that demand in 20 installments, as specified.
    - e) Establish procedures for responsible parties to challenge their designation as such or their cost recovery demand.

- f) Adjust a responsible party's cost recovery demand if it shows its attributed emissions are attributable to another responsible party.
- 5) Establishes the Polluters Pay Climate Fund ("Fund") and continuously appropriates it to CalEPA to implement the Program, including qualifying expenditures, and to reimburse any outstanding loans used to finance the initial costs of implementing the Program.
  - 6) States that moneys in the Fund:
    - a) Shall not be expended for any purposes not specified in this part;
    - b) Must be no less than 40% expended for projects and programs that directly benefit environmental justice populations, as defined by CalEPA, facing climate impacts; and
    - c) Insofar as they are used to fund projects and programs, include the assessment and implementation of strategies to increase employment opportunities and improve job quality.
  - 7) Includes a number of other miscellaneous provisions, briefly that:
    - a) CalEPA must conduct regular consultations with a number of other specified agencies;
    - b) CalEPA must adopt all regulations necessary to carry out this part within 180 days of the effective date of the legislation;
    - c) CalEPA must project the costs of implementing the act and assess that cost equitably across responsible parties, who must then pay their share within 180 days of the effective date of the legislation;
    - d) CalEPA and the Attorney General have authority to enforce the requirements and assess late penalties, which accrue as specified;
    - e) The legislation does not relieve, preempt, displace, or restrict any entity's certain other liabilities, rights, or other specified responsibilities;
    - f) The legislation does not supersede any state or local actions on GHGs, collecting taxes and fees, or conducting or supporting investigations; and
    - g) The provisions of the legislation are severable.

## Background

- 1) *Climate change in California.* California is already experiencing the harmful effects of climate change, including an increase in extreme heat events, drought, floods, wildfire, sea level rise, and more. According to the most recent California Climate Change Assessment, by 2100, the average annual maximum daily temperature is projected to increase by 3.1 - 4.9°C (5.6 - 8.8°F), water supply from snowpack is projected to decline by two-thirds, the average area burned in wildfires could increase by 77%, and 31-67% of Southern California

beaches may completely erode without large-scale human intervention, all under business-as-usual and moderate GHG reduction pathways. The state had experienced a degree of wildfire activity by 2020 that California's Fourth Climate Change Assessment initially forecasted to not occur until 2050. 2020 and 2021 saw more area burned than the previous seven years combined. We can expect effects such as these as well as extreme weather events to increase over time until global GHG emissions are significantly reduced.

- 2) *The cost of climate change.* The consequences of climate change come with a huge price tag that is only increasing. In 2020, wildfires in California amounted to economic losses of over \$19 billion. In 2018, a record-setting year for fire-related economic losses, some estimates place that number as high as \$148.5 billion considering indirect effects such as health impacts.

The Natural Resources Defense Council (NRDC) estimates that under a business-as-usual scenario, between the years 2025 and 2100, the cost of providing water to the western states in the U.S. will increase from \$200 billion to \$950 billion per year, nearly an estimated 1% of the United States' gross domestic product.

On sea level rise, a 2015 economic assessment by the Risky Business Project estimated that if current global GHG emission trends continue, between \$8 billion and \$10 billion of existing property in California is likely to be underwater by 2050, with an additional \$6 billion to \$10 billion at risk during high tide. Moreover, a recent study by researchers from the U.S. Geological Survey (USGS) estimated that by 2100, roughly six feet of SLR and recurring annual storms could impact over 480,000 California residents (based on 2010 census data) and \$119 billion in property value (in 2010 dollars). When adding the potential impacts of a 100-year storm—a storm with a one-in-100 likelihood of occurring in a given year—these estimates increase to 600,000 people and over \$150 billion of property value.

There is a human cost to climate change as well. In addition to capital losses, climate change affects physical health, mental health, food security, and more. It results in population migrations as it displaces people from their homes. The dollar amounts of these human costs are difficult to quantify. Taking action to mitigate climate change damage – by reducing emissions, protecting vulnerable communities, and limiting warming – of course also cost money. However, it is important that those costs be compared to the monumental costs of inaction.

Professor Kevin Anderson, a British petrochemical engineer turned climate scientist, is attributed for this description of potential outlooks: “We face an

unavoidably radical future. We either continue with rising emissions and reap the radical repercussions of severe climate change, or we acknowledge that we no longer have a choice and pursue radical emission reductions: no longer is there a non-radical option.”

- 3) *The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*: CERCLA, or Superfund, provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the U.S. EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup.

Superfund liability is retroactive (Parties may be held liable for acts that happened before Superfund's enactment in 1980), joint and several (any one potentially responsible party (PRP) may be held liable for the entire cleanup of the site when the harm caused by multiple parties cannot be separated), and strict (A PRP cannot simply say that it was not negligent or that it was operating according to industry standards; if a PRP sent some amount of the hazardous waste found at the site, that party is liable).

Under Superfund, A PRP is potentially liable for government cleanup costs, damages to natural resources, the costs of certain health assessments, and injunctive relief (i.e., performing a cleanup) where a site may present an imminent and substantial endangerment. Though not directly applicable to the situation of anthropogenic GHGs being increasingly released into the atmosphere, there are apparent similarities in the consideration of damages and liabilities.

- 4) *The “Carbon Majors” report*. Published in 2014 by Richard Heede, the Carbon Majors report describes the GHG contributions attributable to major fossil fuel companies. To quote the report:

*“This project was undertaken to trace the origin of anthropogenic CO<sub>2</sub> and methane to the world’s largest extant producers of carbon fuels and cement. The primary driver of climate change is not current emissions, but cumulative (historic) emissions. This project quantifies and traces for the first time the lion’s share of cumulative global CO<sub>2</sub> and methane emissions since the industrial revolution began to the largest multinational and state-owned producers of crude oil, natural gas, coal, and cement. These fuels, used as intended by billions of consumers, have led to the most rapid increase in atmospheric CO<sub>2</sub> of the last 3 million years and the highest*

*concentration of CO2 of the last 800,000 years.”*

The report represents a methodical effort to assess publicly-available fossil fuel production data; apply fuel-specific emission factors to account for energy content, pollution profile, and other use profiles; and track culpability across decades of mergers and acquisitions. The result is a comprehensive description of which companies' actions led to what share of the total contribution of anthropogenic GHGs to the atmosphere. The author erred on the side of caution and applied conservative assumptions in cases of uncertainty.

Ultimately, the report found that just 90 fossil fuel-producing entities (the so-called “carbon majors”) were responsible for 63.4% of global industrial GHG emissions between 1751 and 2010. It merits clarification that those 90 companies did not directly burn the fuels that led to those emissions; the majority are from end users who purchased resources from the carbon majors.

- 5) *Attribution science: linking emissions and disasters.* Today, as extreme weather events happen more frequently, people are routinely asking if they are caused by climate change. Developments in recent years in a new type of research called attribution science can determine not if climate change caused an event, but if climate change made some extreme events more severe and more likely to occur, and if so, by how much. There have always been extreme weather events caused by numerous natural factors, but climate change is increasing the number and strength of these events. Now, it is possible to quantify climate change's relative influence more precisely, even if it does not cause the event per se.

When there is an extreme weather event, scientists first determine how frequently an event of that magnitude might occur based on historical and observational data. Attribution studies then run identical climate models under two scenarios. In the first, GHG concentrations are kept constant at some level from the past before humans started burning fossil fuels, and the climate model is run over, say, a 150-year period. For the second scenario, the climate model goes back in time again, plugging in the actual GHG concentrations for each year as they increased over time. By comparing the results from the two modeled scenarios, scientists can estimate how much human emissions from fossil fuel activity have shifted the odds. Statistical methods are then used to quantify the differences in severity and frequency of the event.

As an example, if the extreme event occurs twice as often in today's climate model as it does in the counterfactual climate model, then climate change is determined to have made the event twice as likely as it would otherwise have

been in a world without human-induced emissions. Such claims have become a hallmark of climate journalism in recent years.

- 6) *Other proposed Climate Superfunds.* This legislation is one of several recent efforts that have been undertaken to follow the Superfund model for collecting climate damage payments from fossil fuel companies. A federal effort was started in the U.S. Senate in 2021. Two years ago, New York became the first state to propose their own approach. Since then, Massachusetts, Vermont, and Maryland have introduced their own measures as well. While none of these efforts have made it through the entire legislative process in their states, the bill before the committee is not the first (nor likely to be the last) bill that attempts to codify recompense from fossil fuel companies to cover the cost of climate damages.

## Comments

- 1) *Purpose of Bill.* According to the author, “Fossil fuels account for nearly 90% of all CO<sub>2</sub> emissions and more than 75% of global greenhouse gas (GHG) emissions. Published, peer-reviewed research of polluters’ own self-reported data demonstrates that about 2/3 of human-caused CO<sub>2</sub> and methane emissions were caused by the world’s 90 largest fossil fuel emitters. These polluters have profited by producing and selling fossil fuels while externalizing their pollution costs upon California families who have paid the price for the damage their products caused.

“Californians face billions in climate crisis related costs in the years ahead. The 2021-22 budget alone included \$9.3B for climate-related responses. A comprehensive study is needed to quantify the staggering burden fossil fuel polluters have imposed on the public. Polluters must share in that burden and pay for the damages their pollution has caused. As the state faces a multibillion-dollar deficit, and possible cuts to critical climate programs, this action is just, timely, and necessary to keep the state on track to meet climate targets and protect our communities against the ravages of the climate crisis. SB 1497 establishes a program in California’s Environmental Protection Agency (CalEPA) to assess fees on the largest fossil fuel polluters in the state, to pay their fair share of the damage their products have inflicted on California. The assessments would initially pay for a cost study to quantify climate impacts to the state, and then to help pay for the damages. Without this bill, California taxpayers will continue to pay for climate damages that should be borne by the polluters who raked in massive profits by causing them.”



- 2) *Who pays for California's climate damages?* The stated purpose of the Program is to “[relieve] a portion of the burden from climate harms that is currently borne by California taxpayers.” This makes an important point: With or without this bill, the costs of climate disaster recovery, adaptation, and mitigation will climb and must be paid. This bill prompts members of the Legislature to answer the question, “Paid by whom?” SB 1497 asserts that the most appropriate payers for these damages are the companies who contributed the most through extracting, processing, and selling fossil fuels. Absent such a directive, the state will likely be left footing the bill, and in turn the Californian taxpayers.

The Act's approach can be likened to the Superfund law, established by the CERCLA, which imposes liability on parties responsible for, in whole or in part, the presence of hazardous substances at a site. Superfund liability is retroactive (Parties may be held liable for acts that happened before Superfund's enactment in 1980) and strict (a potentially responsible party (PRP) cannot simply say that it was not negligent or that it was operating according to industry standards. If a PRP sent some amount of the hazardous waste found at the site, that party is liable).

Both of those features of Superfund liability are germane to this bill. The covered period is the entirety of 2000-2020, and so the Act is calling for the assessment of the costs of damage caused by GHGs that have already been emitted. Importantly, under the strict liability standard, there is no determination of fault, accusation of malicious intent, or anything like that. Rather, certain companies were unquestionably responsible for extracting, processing, and selling the fossil fuels that contributed the glut of GHGs in the atmosphere today that are in turn inducing catastrophic warming. This does not necessarily mean they were acting negligently, but under the Act they would be liable for a portion of the cleanup costs given their role in turning buried fossil fuels into atmospheric GHGs all the same. In much the same way that the responsible parties for a Superfund site are liable for paying cleanup costs even if the activity at the site provided public benefit, so too would fossil fuel companies under the Act, irrespective of the demand from—and benefits to—broader society.

Some facts about the situation are incontrovertible. Fossil fuels have been extracted, processed, sold, and burned. GHGs have been released to the atmosphere. Their impact on the atmosphere has led to (and is projected to lead to even more) massive, costly, deadly damages. From these facts, a tough question emerges; should those costs be borne by the companies most directly implicated in the production and sale of fossil fuels, or by the Californians

unlucky enough to live through the disasters caused by them?

- 3) *How much money are we talking about?* The cost study CalEPA is tasked with by SB 1497 would be the most comprehensive effort to quantify the costs of climate change in California. As described in the background, projected impacts across California and other western states are on the order of hundreds of billions of dollars already, though these estimates vary considerably given disparate assumptions and limitations between different sources.

To get a sense of potential damages considered elsewhere, the proposed federal climate Superfund would be estimated to collect \$500 billion. Estimates for damages collected under New York's proposed climate Superfund law range from \$30 to \$75 billion. The exact cost for California, as estimated by the climate cost study required by SB 1497, is impossible to predict here. But, it seems safe to say it would likely in the range of tens, if not hundreds, of billions of dollars. This would flow to the state through, at most, the 20 years over which SB 1497 allows responsible parties to make payments.

Such a large number can be difficult to conceptualize without points of comparison. Total California General Fund spending in the 2023-2024 Budget was \$208.7 billion. GGRF, from cap-and-trade's inception to July 2023, has received \$24.3 billion from the auction of allowances. Exxon Mobil and Chevron reported \$36 and \$21.3 billion in profits in 2023, respectively. The Camp Fire in 2018 caused an estimated \$16.5 billion in damages to Paradise, California and its environs.

- 4) *How many polluters are we talking about?* Under SB 1497, CalEPA would be required to list the responsible parties within 90 days of the enactment of the legislation. Responsible parties are those that hold or held majority ownership interest in a fossil fuel business 2000-2020 that did business in California (or otherwise had sufficient contact with the state to satisfy the due process requirements of the United States Constitution), and that is determined by CalEPA to be responsible for—on a worldwide basis—more than one billion metric tons of emissions between 2000 and 2020. A billion tons is a tremendous volume of emissions, and on that basis alone, nearly any company that is not a major fossil fuel producer would likely be unaffected by the Act.

While the specific list of responsible parties and emissions has not yet been determined, some rough estimates can be made. According to information provided by the sponsor, an analysis of publicly available information suggests that only the roughly 69 most-emitting companies in the world meet or exceed the one billion metric ton of GHGs standard. Furthermore, “doing business in

California,” is only readily apparent for 41 of those companies. In other words, while imprecise until considered by CalEPA under the Act, the number of companies who may be liable to pay here is likely quite small. While the impact on any company covered by the Act will be substantial, the billion-ton threshold ensures only major companies are targeted.

Ultimately, the question of which companies would or would not be covered by the Act will be an important question for implementation and damage cost collection. *The committee may wish to clarify the definition of “responsible party” to reference Section 410.10 of the Code of Civil Procedure to reflect entities California may have jurisdiction over, as well as specifying that the one billion metric ton covered fossil fuel emission threshold applies to the global aggregate emissions.*

- 5) *Which emissions are we talking about?* “Covered fossil fuel emissions” is defined by SB 1497 to mean, “the quantity of GHGs released into the atmosphere during the covered period, expressed in metric tons of carbon dioxide equivalent, resulting from the extraction, production, refining, or sale of fossil fuels or petroleum products.” It is notable that the definition specifically includes only the, “extraction, production, refining, or sale.”

The author’s intent with this legislation is to capture the full breadth of fossil fuel-related emissions put into the atmosphere in the covered period. However, one reasonable interpretation of the current definition in the bill is that it covered GHG emissions associated with the extraction, production, refining, and sale of fossil fuels, but not their various end uses. This merits clarification, since the extent of the emissions covered has a tremendous impact on the scope of the Program. *The committee may wish to consider adding combustion to the list of activities resulting in GHG emissions encompassed by the Act.*

It should also be noted that SB 1497 includes a seemingly novel definition of GHGs, including any, “...chemical or physical substance that is emitted into the air and that the agency may reasonably anticipate is causing or contributing to climate change including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride” The benefit of this expansive definition is not clear. The six specific GHGs listed (as well as nitrogen trifluoride) are codified in HSC § 38505(g). Referencing this definition, rather than codifying a separate one, would make the scope of the cost study more defined, and would avoid a situation where different portions of the Health and Safety Code contain conflicting lists of GHGs. *The committee may wish to consider defining “greenhouse gas”*

*through a reference to HSC § 38505(g).*

- 6) *Aren't these companies already paying?* While major fossil fuel companies have not, to date, been forced to pay damages under a climate Superfund-type model, nor have they gotten off scot-free. California has imposed a number of regulations on these same companies, some of which have already led to moneys flowing to the state.

Cap-and-trade requires covered entities (some of whom would be responsible parties under the Act) to obtain one allowance per ton of CO<sub>2</sub>-equivalent emissions released in the state. In practice, this increases the operating costs of covered entities and results in GGRF moneys that can be appropriated by the Legislature. The Low-Carbon Fuel Standard (LCFS) requires gasoline and diesel producers to procure LCFS credits, which are generated by lower-carbon alternative fuels. In practice, this too increases the operating costs of fossil fuel producers in the state and results in additional revenue for the producers of lower-carbon alternative fuels. In affecting the operating expenses for fossil fuel providers in California, both of those programs also ultimately impact the costs end users of fossil fuels encounter as well. While those are two of many in an unclear array of factors affecting fuel costs, Californians are notably and understandably sensitive to these impacts nonetheless.

The cost recovery demand contemplated by the Act is different. The cost recovery is a one-time retroactive recompense, being based only on emissions released 2000-2020, so it should have no impact on operating costs going forward. The cost recovery also is only imposed on certain fossil fuel companies above a certain threshold. This means some fossil fuel providers selling their products in the state will be affected by the cost recovery demand, and some will not. As a result, those affected will be unable to pass the expense through to their customers; they would no longer be able to compete against companies who did not do so.

The intended effect of this legislation, rather, seems to be to have the cost recovery demand cut into the responsible parties' profit margins. Those profit margins have, for many fossil fuel companies, climbed to record levels in recent years. From an economic perspective, those profits themselves are the result of major environmental costs that were never reflected in the price of fossil fuels. It seems fossil fuel companies were able to become some of the most profitable enterprises in human history in part by avoiding the externality of dealing with catastrophic global climate change. Given that, perhaps reclaiming a portion of those profits to do so is a desirable outcome.

- 7) *Where does the money go?* The bulk of SB 1497 is focused on the calculation and collection of costs to cover climate damages; very little is specified about where the (likely) tens or hundreds of billions of dollars in the Fund would go. So-called “qualifying expenses” include actions taken to mitigate, adapt, or respond to climate change, which could encompass a dizzying scope of work. The Act requires at least 40% of the moneys expended for projects and programs must be for ones that directly benefit environmental justice populations (as defined by CalEPA) facing climate impacts. While laudable, that direction does still leave many questions unanswered.

This could be huge. The redistribution of tens-to-hundreds of billions of dollars from the world’s largest fossil fuel polluters to projects and programs in the state represents an unprecedented opportunity to right some of the wrongs caused by global climate change and make a difference in Californians’ day-to-day lives.

What are the most appropriate, impactful, just, and effective uses of the Fund? Should it be used to cover the cost of climate-related natural disasters? Should it be used to harden homes, restore wetlands, install air conditioning, and shore up flood control infrastructure? Should it be used to make direct payments to Californians to defray the costs of decarbonizing the state’s economy? Should it be used to invest in pre-commercial technologies needed to mitigate climate change for the public interest, despite being unprofitable? Should it be used to support and train the very Californians whose careers depend on the fossil fuel industry today? There is no shortage of worthy projects that could help California thrive in a climate-changed world. Considering the well-documented prevalence of fossil fuel companies obstructing the truth around fossil fuels causing climate change in order to maximize and prolong their profitability, there is a certain poetic justice to appropriating those same profits to respond to the situation they exacerbated.

Given the magnitude of funds that could flow through the state via the Fund and the variety of eligible uses, it seems apparent that any decisions about where the moneys should go should be made in a public, transparent way. Consider GGRF. Although the auction of cap-and-trade allowances is carried out by CARB, the moneys in the fund are ultimately appropriated through the annual budget process. This enables input from a range of stakeholders and accountability for decision makers. ***The committee may wish to amend the Act to have the Fund be appropriated annually by the Legislature through the budget process, similar to how GGRF is appropriated today. This would provide an opportunity to better assure certain additional requirements, priorities, and cobenefits can be assessed, similarly to HSC § 39712(b) for***

**GGRF.**

- 8) *Technical and clarifying amendments.* Several nonsubstantial ambiguities and drafting issues were discovered since the bill's introduction and merit clarification. ***The committee may wish to make a number of minor amendments to ensure the intent, scope, and impacts of the legislation are entirely clear.***
- 9) *Committee amendments.* ***Committee staff recommends the adoption of the bolded amendments described in comments 4, 5, 7, and 8 above.***

*Due to timing constraints, these changes must be amended into the bill as part of the actions taken by the next committee. Should the author commit to taking these amendments, the motion in this committee will be "do pass" with that understanding.*

*In summary, the amendments proposed in committee today are:*

- a) Add "combustion" to the activities covered under the definition of covered fossil fuel emissions;*
- b) Redefine "greenhouse gas" to have the same meaning as HSC 38505(g);*
- c) Redefine "responsible party" to include reference to Code of Civil Procedure § 410.10, and clarify the billion metric ton limit applies to aggregate global emissions;*
- d) Have the Fund be appropriated annually by the Legislature through the Budget process for purposes in line with the climate cost study; and*
- e) Make the three minor and technical amendments.*

**DOUBLE REFERRAL:**

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

**Related/Prior Legislation**

**SOURCE:** Center for Biological Diversity

**SUPPORT:**

1000 Grandmothers for Future Generations  
350 Bay Area Action  
350 Conejo / San Fernando Valley  
350 Sacramento

350 Ventura County Climate Hub  
Acterra: Action for A Healthy Planet  
Active San Gabriel Valley  
Alliance of Nurses for Healthy Environments  
Asian Pacific Environmental Network (APEN)  
Azul  
Bay Area-system Change Not Climate Change  
Benicians for A Safe and Healthy Community  
Breast Cancer Action  
California Climate Voters  
California Environmental Justice Alliance (CEJA) Action  
California Environmental Voters (formerly Clcv)  
California Nurses for Environmental Health and Justice  
California Youth Versus Big Oil  
Center for Biological Diversity  
Center for Climate Change and Health  
Center for Community Action and Environmental Justice  
Center on Race, Poverty, & the Environment  
Central California Asthma Collaborative  
Central California Environmental Justice Network  
Central Coast Environmental Voters (CCEV)  
Central Valley Air Quality Coalition (CVAQ)  
Cerbat  
Citizens' Climate Lobby Santa Cruz  
Cleaneearth4kids.org  
Climate Action California  
Climate Brunch  
Climate First: Replacing Oil & Gas (CFROG)  
Climate Hawks Vote  
Climate Health Now  
Climate Reality Project San Fernando Valley Chapter  
Climate Reality Project, California Coalition  
Climate Reality Project, Los Angeles Chapter  
Climate Reality Project, Monterey Bay Chapter  
Coalition for Clean Air  
Communities for A Better Environment  
Community Environmental Council  
Community Water Center  
Consumer Watchdog  
Corporate Ethics International  
Courage California  
Earthworks  
Ecoequity  
Elders Climate Action Northern California Chapter

Elders Climate Action Southern California Chapter  
Elected Officials to Protect America - Code Blue  
Endangered Habitats League  
Environmental Protection Information Center  
Environmental Working Group  
Families Advocating for Chemical and Toxics Safety  
Food & Water Watch  
Fossil Free California  
Fractracker  
Friends of The Earth  
Glendale Environmental Coalition  
Good Neighbor Steering Committee of Benicia  
Greenpeace USA  
Human Impact Partners  
Indivisible Marin  
Labor Rise Climate Jobs Action  
Lutheran Office of Public Policy - California  
Mothers Out Front  
Natural Resources Defense Council (NRDC)  
Nextgen California  
Northern California Elders Climate Action  
Northridge Indivisible  
Oil & Gas Action Network  
Oil Change International  
Pacific Environment  
Pelican Media  
Physicians for Social Responsibility - Sacramento Chapter  
Physicians for Social Responsibility, Los Angeles  
Presente.org  
Protect Playa Now!  
Redeemer Community Partnership  
Rising Sun Center for Opportunity  
Rootsaction.org  
San Francisco Bay Physicians for Social Responsibility  
San Francisco Baykeeper  
San Joaquin Valley Democratic Club  
Santa Barbara Standing Rock Coalition  
Santa Cruz Climate Action Network  
Sequoia Forestkeeper  
Sierra Club California  
Stand.earth  
Strategic Concepts in Organizing and Policy Education  
Sunflower Alliance  
Sustainable Mill Valley



The Climate Center  
Union of Concerned Scientists  
Voices for Progress  
Vote Solar  
West Berkeley Alliance for Clean Air and Safe Jobs  
West LA Democratic Club  
Youth for Earth  
Youth Vs. Oil

**OPPOSITION:**

California Business Properties Association  
California Cement Manufacturers Environmental Coalition  
California Chamber of Commerce  
California Fuels and Convenience Alliance  
California Independent Petroleum Association (CIPA)  
California League of Food Producers  
California Sustainable Cement Manufacturing & Environment (CSCME)  
California Taxpayers Association  
International Brotherhood of Boilermakers  
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers  
International Brotherhood of Boilermakers, Western States Section  
Naiop of California  
State Building & Construction Trades Council of California

**ARGUMENTS IN SUPPORT:** According to a coalition of over 100 organization, including the sponsors, "...The climate emergency and the costly disasters that come with it are hammering communities across California. Our groups represent hundreds of thousands of Californians experiencing these escalating climate harms firsthand. This bill would protect people in California by shifting a portion of the financial burden polluting industries impose on taxpayers to the companies that caused the problem and profited from it.

"The extraction, refining and burning of fossil fuels is the primary cause of the climate crisis, and is an immediate, grave threat to California. For decades, the fossil fuel industry externalized their pollution costs upon the public while profiting from their polluting products. As a result, taxpayers and the state have been saddled with the massive bill to respond to increasingly severe climate harms, including rising sea levels, increasing temperatures, extreme weather events, flooding, heat waves, biodiversity loss, and other ecosystem threats...

"SB 1497 is separate and distinct from important climate accountability lawsuits brought by California local governments, the state of California, and other entities

to hold polluters accountable for lying about climate change and violating statutory and common law. This bill does not preempt or impede ongoing or future litigation, but is instead an important complement to those actions.

Without this bill, taxpayers continue to be on the hook for the fossil fuel industry's damage. It is time for polluters to pay."

**ARGUMENTS IN OPPOSITION:** According to a coalition including the California Chamber of Commerce and other business groups, "This measure will increase operational costs for businesses here in California. Those added costs will be passed on to the consumer... Imposing what amounts to a tax on businesses that are simply fulfilling demand for a commodity such as petroleum is impractical. SB 1497 will lead to job losses and economic instability, and these added costs will only discourage further investment in the state's economy..."

"SB 1497 includes a very broad definition of "responsible party", meaning that there are several entities that would be subject to this proposed tax. For example, load-serving entities that deliver energy through natural gas power plants would likely meet the definition. This means that the costs associated with this measure would effectively be passed on to the ratepayer.

"The cost recovery demands are based on costs that are "fairly and reasonably allocated to the covered period." To our knowledge, there is no scientific way to tie a GHG emission from 2019 to an event that happens in 2024. Therefore, the only logical way to determine the costs associated with this period is to allocate a percentage based on total GHG emissions over a longer period of time.

"Rather than imposing punitive measures, the Legislature should look to real solutions that will drive down emissions. Incenting clean technologies and investing in innovation that can foster economic growth here in the state. California has very ambitious climate targets. Achieving those targets is going to require leveraging every resource available. Furthermore, entities are already paying for their GHG emissions under the cap-and-trade program. This bill would essentially make fossil fuel companies pay twice for their GHG emissions. Simply put, SB 1497 will not help the state achieve those ambitious targets, but rather reduce available resources at a time when they are needed most.

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