

Dear Senate Committee on Energy and Environment,

I strongly oppose SB 1187 – the inaptly nicknamed “Make Polluters Pay” Act! This measure is nothing other than a thinly veiled carbon tax, an environmental shakedown which will create an enormous slush fund for politically connected environmental advocacy groups. It is a power grab that has the added benefit of being useful leverage against politically unfavorable industries. SB 1187 will facilitate a massive and dangerous expansion of state government power and will likely have a chilling effect on business activities in this state.

The supporters of this misguided measure shout “make the polluters pay!” So . . . who exactly are these “polluters?” SB 1187 purports that the “polluters” are “evil” fossil fuel producers. Fossil fuel producers who supply the lifeblood of business and productive life in this state. Yes, “lifeblood” – those nasty petroleum products that are purchased and used by millions of Oregonians . . . so by implication, the citizens of Oregon are the “polluters,” and the citizens of Oregon will pay! This is no different than the absurd idea of imposing extortionate taxes on corporations so that they “pay their fair share,” thinking that corporations will just absorb the additional tax burden, when it’s actually the consumers who pay. To claim otherwise is completely disingenuous.

How on earth does one accurately create a linkage between the historical carbon dioxide emissions of alleged “polluters,” and the cost of disparate climate events and natural disasters that occur all over the globe? What proof is there that emissions during a specified period caused or aggravated a specific natural disaster? This sounds very dangerous, arbitrary and open-ended.

It’s clear that if this bill is passed it will be immediately challenged in court, at great expense to taxpayers. A similar law in New York has already been challenged by 22 states. There are several legal analyses of the two existing “Climate Superfund” laws (New York and Vermont) which show that Oregon’s proposed law could be challenged on the following grounds:

It constitutes unlawful retroactivity, as it would impose penalties for actions that were entirely lawful during the 20-year “covered period,” and which remain lawful today.

It will impose penalties on fossil-fuel producers (read - Oregon citizens) for activities lawfully authorized under federal law and by other states. This is the basis of the current lawsuit against New York’s climate Superfund scheme, as individual states lack the power to punish activities occurring outside their borders and which are authorized by the federal government and other states.

It constitutes a violation of the Supremacy Clause as a state cannot punish or regulate actions beyond its borders except through the Clean Air Act (CAA). The CAA does not authorize a scheme similar to the one proposed in SB 1187, so any proposed law would be preempted on that basis.

It constitutes multiple Due Process issues. It is completely arbitrary and irrational to impose responsibility for the effects of global climate change within a single state on a small group of disfavored entities (petroleum producers); it is unfair and oppressive to impose retroactive liability for 20 years of lawful

activity; the penalties imposed are vague and subjective and left to the sole discretion of a State agency; there are no procedural safeguards within this bill to avoid arbitrary and excessive penalties.

The greatest danger posed by this bill is that it tasks the Oregon Environmental Quality Commission with conjuring a "methodology" which will conclude that alleged "polluters" have caused specific harms. The Commission will and then issue "cost recovery demands" against those "polluters" which have been arbitrarily identified by the Commission as "strictly liable." This procedure creates an illegitimate ex-post-facto standard where historically permitted or unregulated emissions are considered as part of a formula to determine present-day penalties. Normally, liability is determined by a trial process that makes findings of fact. Under the proposed "methodology," there is no opportunity for those being penalized to present a defense, challenge the data, challenge the methodology, or challenge the penalty. This another way SB 1187 sidesteps due process.

In conclusion – please reject SB 1187. It is an extreme overreach – yet another power grab cloaked under the guise of "climate action." There is no doubt that we need to adapt to a changing climate, as well as to be prepared for natural disasters. And yes, adaptation and preparedness takes funding. However, we need to look towards existing funding sources before creating a giant unaccountable slush fund. A lot of money is wasted in this state – let's look there first.

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