



GREEN ENERGY
INSTITUTE
Lewis & Clark Law School

Carra Sahler
10101 S. Terwilliger Boulevard
Portland, Oregon 97219
Phone: (503)768-6634
E-Mail: sahler@lclark.edu

Dear Chair Sollman, Vice Chair Brock Smith, and Members of the Committee,

On behalf of the Green Energy Institute (“GEI”) at Lewis & Clark Law School, we are writing to provide further context and information about Senate Bill (“SB”) 1187, the “Make Polluters Pay” bill, and to address concerns that have been raised about the potential economic impacts of the bill.

On April 8, the White House issued an Executive Order titled *Protecting American Energy from State Overreach*.¹ Re-emphasizing President Donald J. Trump’s goal to “unleash American energy,” the Order targets state and local governments for energy regulation supposedly “beyond their constitutional or statutory authorities.”² It specifically calls out “burdensome and ideologically motivated ‘climate change’ or energy policies,” including the climate superfund laws similar to SB 1187 recently passed in Vermont and New York.³ The Order directs the Attorney General to identify and stop enforcement of state climate laws that “collect carbon penalties or carbon taxes.”⁴ Legal experts say this Executive Order is “toothless,” since the Federal Government lacks authority over state laws under the cooperative federalism form of government embedded in the Tenth Amendment of the U.S. Constitution.⁵ If the Attorney General wishes to challenge laws such as SB 1187, she would have to bring a preemption claim against the state. And in order to bring such a case, she “will have to point to the federal law sources of such alleged preemption. New sources of preemption... would have to come from Congress. The executive branch cannot change federal law on its own, and any new legislation would likely have to pass the 60-Senator threshold to advance out of the Senate, which may prove difficult.”⁶ **Absent such new legislation, the legal foundation underpinning SB 1187 remains strong.**

As you heard from several concerned Oregonians during the public hearing on April 7, the old adage of “*you make a mess, you clean it up*” is a longstanding and closely held belief for

¹ *Protecting American Energy from State Overreach*, The White House (Apr. 8, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-energy-from-state-overreach/>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Adam Aton & Lesley Clark, *Trump declares war on state climate laws*, E&E News (Apr. 9, 2025), <https://www.eenews.net/articles/trump-declares-war-on-state-climate-laws/>.

⁶ Amy Turner, *New Executive Order Tees Up Challenges to State and Local Climate Laws*, Columbia Law School Sabin Center for Climate Change Law (Apr. 8, 2025), <https://blogs.law.columbia.edu/climatechange/2025/04/08/new-executive-order-teens-up-challenges-to-state-and-local-climate-laws/>.

many families in Oregon. But it is much more than a household belief. It is a legal doctrine—the polluter pays principle—that underscores much of our state and federal environmental laws. SB 1187 extends the polluter pays principle to the fossil fuel industry for the harm it inflicted upon Oregonians through years of resource extraction and refinement in the state. Similar to the way the U.S. Congress codified the polluter pays principle to impose retroactive strict liability on polluters under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), SB 1187 will hold major fossil fuel companies strictly liable for the costs of the climate impacts caused by their operation within the state.⁷

SB 1187 has received tremendous support from the public; yet still, some people have expressed concern that the bill will raise the cost of energy for Oregonians.⁸ These concerns stem from a misunderstanding of how the bill is structured and the way in which costs will be allocated. We hope to address these concerns by clarifying a few key points of the Make Polluters Pay bill.

A. The costs of climate impacts in the state are currently being paid by Oregonians.

SB 1187 attempts to remedy a history in which Oregonians shouldered the full costs of remediating and mitigating the impacts of climate change. Between 1980 and 2025, Oregon has experienced 41 billion-plus-dollar disaster events, including: 3 winter storms, 16 droughts, 16 wildfires, 2 severe storms, 3 floodings, and 1 deep freeze.⁹ The August 2020 wildfires alone resulted in 46 deaths, destroyed over 2,000 structures, produced hazardous air quality that affected millions of people, and cost an estimated \$20.2 billion.¹⁰ The State is still grappling with how to fund the recovery from this wildfire, while simultaneously attempting to prepare for the next disaster. **Under the existing legal framework, the only options available require forcing Oregonians to pay for these climate impacts through taxes and private investments or hope to successfully litigate liability in court.**

SB 1187 creates a new legal remedy that will hold responsible parties, **not Oregonians**, liable for these costs.

B. SB 1187 imposes the costs of Oregon’s climate impacts on the fossil fuel industry, not Oregonians.

SB 1187 is a bill aimed at the fossil fuel industry, not Oregonians. The bill assigns strict liability to “business[es] engaged in extracting or refining fossil fuel” in the state and holds them proportionally responsible for the climate impacts caused by their greenhouse gas (“GHG”)

⁷ Katharine Bleau, *A Climate Superfund*, Nat. Resources & Env’t, Fall 2024, 55, 56.

⁸ E.g. SB 1187 Testimony [170936](#), [171103](#), and [171231](#).

⁹ *U.S. Billion-Dollar Weather and Climate Disasters*, NOAA National Centers for Environmental Information (Apr. 10, 2025), <https://www.ncei.noaa.gov/access/billions/>. (Values are CPI-adjusted.)

¹⁰ *Id.*

emissions.¹¹ This correctly assigns responsibility to the fossil fuel industry, requiring it to cover the costs that, up until this point, have been unfairly borne by Oregonians. By internalizing these costs, the fossil fuel industry will finally be held to account for the cost of doing business, rather than requiring Oregonians to subsidize the industry's already lucrative operations.

C. The fossil fuel industry will not be able to shift these costs on to Oregonians through gas and energy prices.

Concerns about the bill's potential to raise energy costs are based on hypothetical cost shifting that the bill is designed to prevent. Nobel Prize-winning economist Joseph Stiglitz addressed this concern in his letter to Governor Kathy Hochul regarding New York's Climate Change Superfund Act.¹² Professor Stiglitz provided four justifications for why consumer gasoline prices would not be impacted by a bill similar to SB 1187.

1. The bill is based on historic contributions to GHG emissions. As such, it would not have an effect on future production costs, which are a function of the market's costs of production and demand at that moment in time.¹³ Instead, the fossil fuel industry will treat the costs imposed by SB 1187 as a fixed cost borne by the owners of the relevant companies.¹⁴
2. Strong market forces will deter cost shifting, since rising consumer prices will decrease demand.¹⁵ Instead, responsible parties will want to maintain competitive prices in order to maximize profits.¹⁶
3. The oil market precludes localized price increases, because its prices are set globally based on the balance of supply and demand.¹⁷ SB 1187 does not implicate global crude prices, refining costs, distribution and marketing costs, or local taxes and fees, which drive gasoline prices. Additionally, SB 1187's cost assessment is too far upstream and too small to impact local costs.¹⁸

¹¹ S.B. 1187(1)(14)(a), (11)(2).

¹² *Nobel Prize Winning Economist to NY Gov: Superfund Act Will Save New Yorkers Money, Make Polluters Pay* (Nov. 26, 2024), <https://makepolluterspay.net/nobel-prize-winning-economist-to-ny-gov-superfund-act-will-save-new-yorkers-money/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

4. Responsible parties under SB 1187 are large, global companies that enjoy significant operating revenue and significantly large profits, and they can absorb the costs imposed by the bill without causing disruptions to their operations.¹⁹

Oregonians will be shielded from cost shifting in the energy sector as well. Electricity and natural gas rates in the state are set by the Oregon Public Utility Commission (“OPUC”).²⁰ While the utilities act as natural monopolies and thus would not be responsive to market competition, they are subject to OPUC regulation.²¹ Through the ratemaking process, the OPUC ensures that Oregon ratepayers are only charged rates which are deemed to be just and reasonable.²² Finally, just as Professor Stiglitz noted about gasoline prices, SB 1187’s costs on the energy sector would be treated as fixed costs, assessed far upstream, and imposed upon large companies capable of absorbing the costs imposed.

SB 1187 provides the Oregon Legislature the opportunity to recover significant costs borne by the State.

Respectfully,



Carra Sahler (she/her/hers)

Director and Staff Attorney, Green Energy Institute at Lewis & Clark Law School



Ricky Armendariz (he/him/his)

Law Clerk, Green Energy Institute at Lewis & Clark Law School

¹⁹ *Id.*

²⁰ *Public Utility Commission*, Or. Blue Book (last visited Apr. 9, 2025), <https://sos.oregon.gov/blue-book/Pages/state/executive/public-utility.aspx>.

²¹ *Gearhart v. Pub. Util. Comm'n of Oregon*, 255 Or. App. 58, 299 P.3d 533, 537 (2013), *aff'd*, 356 Or. 216, 339 P.3d 904 (2014).

²² *Id.* at 538.