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A BILL TO PERMIT THE STATE OF CALIFORNIA AND OTHER STATES TO EFFECTIVELY CONTROL GREENHOUSE GAS EMISSIONS FROM MOTOR VEHICLES, AND FOR OTHER PURPOSES

JUNE 27, 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 2555]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 2555) to permit California and other States to effectively control greenhouse gas emissions from motor vehicles, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

S. 2555 amends the Clean Air Act to permit the State of California and other States to immediately proceed with the regulation of greenhouse gas emissions from motor vehicles by implementing the regulation for such purposes for which California requested a waiver of preemption under the Clean Air Act. This will allow the States to avoid the burden of litigating for what could be several years, while climate change continues to threaten public health and the environment. The bill would also provide certainty to automakers, the States, and the public about future regulatory requirements for greenhouse gas emissions from motor vehicles.

GENERAL STATEMENT AND BACKGROUND

Title II of the Clean Air Act (Title 42, Chapter 85, Subchapter II, United States Code) establishes a program for controlling emissions of air pollutants from new motor vehicles and other mobile sources of air pollution. In accordance with section 202 of the Act, the Administrator of EPA is required to prescribe standards applicable to the emission of any air pollutant from new motor vehicles which, in the judgment of the Administrator, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

Section 209(a) of the Clean Air Act generally preempts States and local jurisdictions from setting their own emission standards for new motor vehicles. However, section 209(b) of the Act requires the Administrator to waive preemption with respect to a State that meets specified criteria if the State determines that its motor vehicle standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

Section 209(b) further provides that a waiver of preemption will not be granted if the Administrator makes any of three specified findings. The Administrator may act on a waiver request only after providing notice and an opportunity for a public hearing.

California is the only state in the nation that can meet the criteria set forth in section 209(b) to waive federal preemption. The Clean Air Act gives California the unique opportunity to set its own vehicle emission standards in recognition of California's early leadership in setting such standards and the State's particularly severe air pollution problems. However, section 177 of the Act authorizes any other State that has an EPA-approved plan for areas in non-attainment of a federal air quality standard to adopt and enforce emission standards that have been granted a waiver under section 209(b).

California has used these provisions of the Clean Air Act to develop or use a host of forward-looking pollution control technologies, including catalytic converters, cleaner fuels, advanced electronic engine management and on-board diagnostic systems, and many other such advances. For example, California currently has waivers for their Zero Emissions Vehicle Program and Partial Zero Emissions Vehicle Program, which has promoted the manufacture and sale of electric and hybrid vehicles.

EPA recognizes the benefits of these pollution control technologies to protecting human health. The Agency acknowledges that use of the first generation of catalytic converters "significantly reduced hydrocarbon and carbon monoxide emissions" and "resulted in dramatic reductions in ambient lead levels . . ." EPA, "Automobile Emissions: An Overview," EPA 400–F–92–007 (1994).

EPA's long history of granting California requests for a waiver of federal preemption under section 209(b) is based on its assessment of the merits of these requests. A December 27, 2007 Congressional Research Service report found that since 1967, in 40 years, EPA has granted California 53 waiver requests in whole or in part. Congressional Research Service, "California's Waiver Request to Control Greenhouse Gases Under the Clean Air Act," at 2 (Dec. 2007).

A 2006 report by the National Research Council of the National Academies of Science concluded that "California has used its authority as Congress envisioned: to implement more aggressive measures than the rest of the country and to serve as a laboratory for technological innovation." National Research Council, "State and Federal Standards for Mobile-Source Emissions," National Academies Press, at 4 (2006).

In 2002, California enacted AB 1493, the nation's first legislation requiring a reduction of greenhouse gases from motor vehicles. The law required the California Air Resources Board to "adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles." Among other things, the law prohibited the Board from creating regulations that would require: "A reduction in vehicle weight . . . A limitation on, or reduction of, the speed limit on any street or highway in the state . . . [or] A limitation on, or reduction of, vehicle miles traveled."

In 2005, California adopted the first standards in the nation for reducing vehicle emissions of greenhouse gases from two classes of automobiles. The State's standards provide tremendous flexibility. Passenger cars, light duty trucks and SUVs weighing 3,750 pounds or less had to gradually reduce their emissions by an average of 36.5 percent between 2009 and 2016. Light trucks and passenger vehicles weighing more than 3,750 pounds had to gradually reduce their emissions by 24.4 percent over the same time period. By the 2016 model year, the standards would cut greenhouse gas emissions from all of these vehicles by almost 30 percent.

California submitted to EPA a request for a waiver of preemption for its greenhouse gas standards on December 21, 2005. However, EPA did not begin acting on the request until 16 months later, after the U.S. Supreme Court ruled in Massachusetts v. EPA that if EPA makes a finding of endangerment for greenhouse gas, "the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles." 127 S. Ct., 1438, 1462 (2007). In that decision, the Supreme Court clearly stated that the Agency can regulate greenhouse gases:

> The Clean Air Act's sweeping definition of "air pollutant" includes "any air pollution agency or combination of such agency, including any physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air . . ." . . . Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical . . . substances which [are] emitted into . . . the ambient air." The statute is unambiguous. *Massachusetts* v. *EPA,* 127 S. Ct. at 1460 (emphasis in original)

After the Supreme Court decision, EPA said that it would consider California's waiver request. According to legal papers filed by the California Attorney General, of the approximately 98,000 comments in the EPA's docket for the waiver request, more than 99.9 percent supported the request.

On December 19, 2007, the EPA Administrator denied California's request for a waiver, but explained that he was having EPA staff "draft appropriate documents setting forth the rationale for this denial in further detail."

Press reports indicated that Administrator Johnson overrode his expert staff's recommendation to grant California's waiver request. See, e.g., J. Eilperin, "EPA Chief Denies Calif. Limit on Auto Emissions; Rules Would Target Greenhouse Gases," The Washington Post, page A1, December 20, 2007 ("Environmental Protection Agency Administrator Stephen L. Johnson yesterday denied California's petition to limit greenhouse gas emissions from cars and trucks, overruling the unanimous recommendation of the agency's legal and technical staffs.") The Senate Committee on Environment and Public Works conducted an investigation of the Administrator's denial of California's request, which confirmed that the Administrator has gone against the opinion of the Agency's experts in denying the waiver request. A later investigation by the House Committee on Government Oversight and Reform also confirmed that the Administrator had gone against his experts' recommendation, and that the Administrator made the decision to ignore this recommendation after meeting with the White House.

As of June 2008, the following 14 States have adopted or have committed to adopt California's greenhouse gas emission standards, and are awaiting EPA's action on California's waiver request: Arizona, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington. Together with California, these states represent 44 percent of the U.S. population and more than 30 percent of the national vehicle fleet. At least 4 other states are moving towards adopting California's standards, including Colorado, Delaware, Illinois, and Utah.

A bi-partisan group of Governors from 14 states, including California, Arizona, Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington wrote a letter to EPA objecting to the Agency's denial of California's waiver request. The Governors stated:

> [EPA's] decision to deny California its waiver ignores federal law and the reality of climate change. It also ignores the clear intent of Congress in the Clean Air Act to enable California to adopt regulations to control emissions from new motor vehicles that are at least as stringent as those of the federal government, and to allow other states to follow.

Under section 209(b), the EPA Administrator "shall . . . waive" the preemption of state emissions standards if California "determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." California made this determination in its waiver request application to EPA.

Once California makes this determination, the Clean Air Act provides very limited discretion for the Administrator to reject the request. Under section 209, the Administrator can reject such a request if he or she finds that the determination is "arbitrary and capricious"; that California "does not need such State standards to meet compelling and extraordinary conditions," or if California's "standards and accompanying enforcement procedures are not con-

sistent with section 202(a) . . .", which establishes baseline requirements for federal motor vehicle emissions standards.

The Committee notes that the lack of any federal standards regulating greenhouse gas emissions from cars makes it all but impossible for the Administrator to claim that California's regulations are arbitrary and capricious. Granting California's waiver request could only establish one set of current standards: California's standards.

The Committee also notes that EPA and California have traditionally and correctly interpreted the "State standards" to be California's program—as a whole—to address automobile emissions. E.g. 49 Fed.Reg. 18889–18890 (May 3, 1984) and 40 Fed.Reg. 23103 (May 28, 1975). This interpretation is clearly supported in the Act's legislative history. U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Clean Air Act Amendments of 1977, H.Rept. 95–294, May 12, 1977, pp. 301–302. EPA must determine if all of the requirements in California's program to address such emissions are as protective of public health and welfare as federal standards. If so, then California has met the "compelling and extraordinary conditions" threshold.

The Committee strongly disagrees with the Administrator's assertion that the global nature of the greenhouse gas problem weighs in favor of finding that no "compelling and extraordinary conditions" exist. First, the Committee's hearing and the record before the Agency when considering the wavier request is replete with examples of the public health, economic, and environmental harm projected as a result of global warming.

California need not develop a plan to address all pollution emissions everywhere that are contributing to a problem before it can regulate such emissions within its borders. The Committee agrees with the Supreme Court's statement in Massachusetts v. EPA, in which it spoke about the importance of beginning to address a serious problem, like global warming:

> Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop . . . They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more-nuanced understanding of how best to proceed. *Massachusetts* v. *EPA,* 127 S. Ct. 1438, 1455 (2007).

Nationally, EPA estimates that transportation accounts for 30 percent of the nation's greenhouse gas pollution. The nation must begin to address this segment of emissions. Failing to do so will limit the effectiveness of other efforts to reduce dangerous greenhouse gas emissions in other sectors.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Summary

Section 1 describes the title of the bill, "Reducing Global Warming Pollution from Vehicles Act of 2008."

Section 2. Findings

Section 2 describes the findings that necessitate passage of S. 2555.

Section 3. Waiver of preemption for California greenhouse gas emissions regulation for vehicles

Section 3 would overturn the EPA's denial of California's request for a waiver of preemption, dated December 21, 2005, and approve the request.

Description

This section would approve California's request for a waiver of preemption to control the emissions of greenhouse gases from certain automobiles and allow other states to adopt those standards.

LEGISLATIVE HISTORY

On January 24, 2008, the Senator Boxer of California introduced S. 2555, joined by original cosponsors Senators Feinstein, Lieberman, Lautenberg, Cardin, Whitehouse, Sanders, Clinton, Leahy, Kerry, Obama, Nelson, Dodd, Kennedy, Mikulski, Collins, Snowe, and Menendez. They were later joined by Senators Schumer, Reed, Klobuchar, Biden, Durbin, Wyden, Murray, Cantwell, and Warner as cosponsors. The bill was read twice and referred to the Senate Committee on Environment and Public Works. The committee met on May 21, 2008, to consider the bill. S. 2555 was ordered favorably reported without amendment by a vote of 10–9.

HEARINGS

The Committee held three hearings on EPA's handling of California's request for a waiver for its greenhouse gas vehicles standards. At a May 22, 2007 hearing on "The Case for the California Waiver," the Committee heard testimony from Edmund G. Brown, Attorney General of California; Alexander B. Grannis, Commissioner of Department of Environmental Conservation of the State of New York; and Jonathan H. Adler, Director of the Center for Business Law and Regulation at Case Western Reserve University School of Law. At a July 26, 2007, the Committee heard from EPA Administrator Stephen Johnson as the sole witness at a hearing entitled, "Examining the Case for the California Waiver: An Update from EPA." Then again on January 24, 2008, the Committee heard from EPA Administrator Stephen Johnson, as well as from Governor Martin O'Malley of Maryland, Governor Jim Douglas of Vermont, Governor Edward Rendell of Pennsylvania, Attorney General Mike Cox of Michigan, Doug Haaland, a staff member of the Republican Caucus of the California State Assembly, David Doniger of the Natural Resources Defense Council, and Jeffrey Holmstead of Bracewell and Giuliani, at a hearing titled, "Oversight of EPA's Decision to Deny the California Waiver."

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2555 on May 21, 2008. The bill was approved without amendment by rollcall vote, 10–9. (Ayes—Baucus, Cardin, Clinton,

Klobuchar, Lautenberg, Lieberman, Sanders, Warner, Whitehouse, Boxer. Nays—Alexander, Barrasso, Bond, Carper, Craig, Inhofe, Isakson, Vitter, Voinovich).

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds, consistent with the findings of the Congressional Budget Office, that S. 2555 does not create any new private sector mandates as defined in the Unfunded Mandates Reform Act, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds, in accordance with the findings of the Congressional Budget Office noted below, that S. 2555 would impose no Federal intergovernmental unfunded mandates on State, local or tribal governments, and that the bill contains no new private-sector mandates as defined in UMRA.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2555—Reducing Global Warming Pollution from Vehicles Act of 2008

S. 2555 would allow California to establish standards that are stricter than those of the federal government for emissions from motor vehicles. The Clean Air Act allows California to establish emissions standards that are stricter than the federal government's if granted a waiver by the Environmental Protection Agency (EPA). This bill would overturn a recent decision by the agency to deny that waiver.

CBO estimates that EPA would incur additional costs to monitor and enforce the alternative regulations. We expect, however, that the costs would not be significant because states that adopt the alternative standards would be solely responsible for overseeing their motor vehicle emissions. Enacting the legislation would not affect direct spending or revenues.

S. 2555 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Susanne S. Mehlman and Jeffrey LaFave. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATOR INHOFE, SENATOR VOINOVICH AND SENATOR CRAIG

S. 2555, a bill to permit the State of California and other States to control greenhouse gas emissions from motor vehicles, should be opposed and returned to the Environment and Public Works Committee by the full Senate because the legislation is unnecessary, duplicative, and disruptive to interstate commerce.

This legislation would overturn the recent decision of the EPA Administrator denying California's request for a waiver to regulate carbon dioxide tailpipe emissions from automobiles. By affirmatively granting this waiver to California, S. 2555 would allow California and other states to proceed immediately to implement their programs regulating carbon dioxide tailpipe emissions.

Generally, the Clean Air Act (CAA) establishes a uniform, federal standard for the regulation of emissions from motor vehicles. Section 209 of the CAA does allow California to adopt and enforce air quality emission standards for new motor vehicles if the State finds that those standards will be at least as protective of public health and welfare as applicable federal standards. However, federal preemption will not be waived if EPA determines: (1) the State's decision is arbitrary and capricious; (2) the standards are not needed to meet compelling or extraordinary conditions; or (3) the State's regulations do not comport to Act's requirements. If EPA grants California's waiver request, other states may adopt its requirements.

In late 2005, California requested a waiver of federal preemption for greenhouse gas (GHG) emissions from new motor vehicles. But EPA's decision was held in abeyance pending the U.S. Supreme Court's decision in Massachusetts v. EPA. In that case, the court held that EPA has authority, under the existing Clean Air Act framework, to regulate greenhouse gas emissions. Subsequent to that decision, EPA issued a decision denying California's waiver request.

In his decision denying the waiver request, the EPA Administrator found that California does not need its greenhouse gas standards for new motor vehicles to meet compelling and extraordinary conditions. Indeed, when Congress created the special exception for California, they did so because the state had a unique smog problem. All of the waiver requests EPA has received from California relate to smog or to closely related pollution problems that had specific localized effects within the state. However, the climate change issue is different because it affects all states, and in fact all nations in the same general way. In this light, a patchwork of state-level greenhouse gas regulations as is now proposed by California is both an unnecessary and inefficient policy approach to the issue of climate change.

The Administrator stated:

> In contrast to local or regional air pollution problems, the atmospheric concentrations of these greenhouse gases is basically uniform across the globe, based on their long atmospheric life and the resulting mixing in the atmosphere. The factors looked at in the past—the geography and climate of California, and the large motor vehicle population in California, which were considered the fundamental causes of the air pollution levels found in California—no longer perform the same causal function.[1]

The Administrator also correctly refuted the argument that increased temperatures associated with climate change would increase ozone levels in California. As discussed above, the Administrator found that greenhouse gas emissions from California cars are not a causal factor for local ozone levels any more than emissions from any other source of greenhouse gas emissions in the world, and it is not the impact on ozone levels that is the key question, but the nature of the causal factors.

Besides the factors outlined by the Administrator in his denial of the waiver, there are numerous additional reasons this legislation should be opposed.

First, we are in the midst of a national debate concerning how climate change is to be addressed. While there are differences of opinion concerning the type of policy the U.S. ultimately adopts, most recognize that effectively addressing climate change will require a coordinated, global effort. In addition, most states and industries agree that a single, uniform, national policy for addressing U.S. GHG emissions is preferable to a patchwork of state requirements. The reasons for this include regulatory certainty and harmony in requirements as well as economic considerations associated with those requirements. At the very least, prudence demands that Congress first decide whether and how to regulate on the federal level. EPA may then address how California's program compares to the federal regulatory regime, and whether that program is consistent with the federal approach selected.

Second, the only feasible way to reduce the amount of GHG emissions from automobiles is to reduce the amount of fuel a vehicle uses. But this is currently being done through the Corporate Average Fuel Economy (CAFE) program, which is being administered by the National Highway Transportation Safety Administration (NHTSA) for the Department of Transportation. However, the Supreme Court's decision has blurred the lines over regulatory authority—effectively empowering two federal agencies with the ability to set CAFE standards. At the same time, the Energy Policy and Conservation Act (EPCA) explicitly prohibits any state from regulating automobile fuel economy.

In Massachusetts v. EPA, the Supreme Court did not consider the issue of whether state regulations regarding carbon dioxide tailpipe emissions from automobiles are preempted by the EPCA, which establishes the nation's CAFE program. EPCA expressly preempts state standards that are "related to" the federal CAFE standards. (29 U.S.C. 32919) Even proponents of the California greenhouse gas tailpipe regulations do not dispute that the only

[1] Federal Register: March 6, 2008 (Volume 73, Number 45) Pg. 12160

way to significantly reduce carbon dioxide tailpipe emissions is to substantially increase fuel economy through the adoption of engine, transmission and other vehicle technologies that increase fuel economy. This issue remains subject to ongoing judicial review. This legislation would directly interfere with the ongoing litigation in the federal courts over whether state carbon dioxide tailpipe emissions regulations are preempted.

Third, as the United Auto Workers (UAW) correctly pointed out in their letter to the Committee dated May 19th, 2008 in opposition to S 2555, the California tailpipe emission standards that would be authorized by this legislation directly conflict with the newly reformed CAFE program enacted by Congress in the Energy Independence and Security Act of 2007. According to the UAW, the California tailpipe emissions standard is not based on an attribute-based system like the reformed CAFE program, it does not maintain separate standards for passenger cars and light trucks, and it exempts auto manufacturers whose production is below a certain threshold, giving a major competitive advantage to newer entrants into the auto market.

Fourth, granting a waiver to California will not simply result in two standards for vehicles, contrary to the "finding" in paragraph fourteen of S 2555. According to the UAW, auto manufacturers would have to make sure that the vehicles they sell in each state satisfy this new stringent standard and because of product mix differences in different states, it would be virtually impossible for the auto manufacturers to satisfy this compliance burden. The National Automobile Dealers Association also point out that the California greenhouse gas tailpipe regulation will discourage new car sales and create a cross-border loophole because vehicles in California and other states who adopt the regulation will be more expensive. By the California Air Resources Board's own admission, the price of a new vehicle will increase over $1,000 due to this regulation.

In conclusion, this legislation would authorize an untested, state-by-state regulatory program that could undermine the national CAFE standard, thus creating a patchwork of regulatory compliance obligations that would provide marginal, if any, benefit from a greenhouse gas reduction standpoint, but would tremendously increase costs and burdens on interstate commerce. It is a political bill that attempts to address a global problem with a statewide solution that undermines a carefully crafted and newly revised national fuel economy standard that raises fuel economy by at least 40%, resulting in an estimated 30% reduction in greenhouse gases.

JAMES M. INHOFE.
GEORGE V. VOINOVICH.
LARRY E. CRAIG.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in **[**black brackets**]**, new matter is printed in *italic,* existing law in which no change is proposed is shown in roman:

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CLEAN AIR ACT

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SEC. 101. (a) The Congress finds—

(1) * * *

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STATE STANDARDS

SEC. 209. (a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b)(1) * * *

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(e) NONROAD ENGINES OR VEHICLES.—

(1) * * *

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(f) WAIVER.—Notwithstanding subsection (b) or any other provision of law; the application for a waiver of preemption dated December 21, 2005, submitted to the Administrator pursuant to subsection (b) by the State of California for the regulation of that State to control greenhouse gas emissions from motor vehicles shall be considered to be approved.

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