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SENATE

{ REPORT
110-243

AMENDING THE CLEAN AIR ACT TO ESTABLISH DEADLINES BY WHICH
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
SHALL ISSUE A DECISION ON WHETHER TO GRANT CERTAIN WAIVERS
OF PREEMPTION UNDER THAT ACT

DECEMBER 12, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 1785]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 1785) to amend the Clean Air Act to establish deadlines by which the Administrator of the Environmental Protection Agency shall issue a decision on whether to grant certain waivers of preemption under that Act, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE OF THE LEGISLATION

S. 1785 establishes deadlines for action by the Administrator of the Environmental Protection Agency (EPA) on State requests under section 209(b) of the Clean Air Act to waive federal preemption for State standards controlling motor vehicle emissions of air pollutants. The bill amends the Clean Air Act to ensure timely decisions on waiver requests by establishing legally enforceable deadlines for EPA action.

GENERAL STATEMENT AND BACKGROUND

Title II of the Clean Air Act (Title 42, Chapter 85, Subchapter II, United States Code) establishes a comprehensive 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.

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 shall 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.

The State that meets the criteria set forth in section 209(b) and may thus seek a waiver of federal preemption is California. The Clean Air Act affords 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. 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 California emission standards for which a waiver has been granted under section 209(b).

EPA has a long history of granting California requests for a waiver of federal preemption under section 209(b), based on its assessment of the merits of these requests. According to a 2007 report by the Congressional Research Service, in over 30 years, EPA has granted over 50 waiver requests in whole or in part. California's Waiver Request to Control Greenhouse Gases under the Clean Air Act, July 24, 2007, p. 9. 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." State and Federal Standards for Mobile-Source Emissions, National Academies Press, 2006, p. 4.

In 2005, California adopted the first standards in the nation for reducing vehicle emissions of emissions of greenhouse gases. The State's standards require a gradual reduction in the greenhouse gas emissions of new passenger vehicles beginning in model year 2009. By the 2016 model year, the standards cut greenhouse gas emissions from new passenger 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. EPA did not begin acting on the request until 16 months later, after the U.S. Supreme Court ruled in *Massachusetts v. EPA* that the Clean Air Act authorizes to regulate greenhouse gases. EPA has stated its intent to issue a decision on the waiver request by the end of 2007, but the Clean Air Act contains no explicit deadline by which the Agency must act.

As of July 2007, the following 12 States have adopted California's greenhouse gas emission standards and are awaiting EPA's action on California's waiver request: Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsyl-

vania, Rhode Island, Vermont and Washington. Together with California, these states represent over 30% of the national vehicle fleet.

SECTION-BY-SECTION ANALYSIS

SECTION 1. WAIVERS OF PREEMPTION

Summary

Section 1 amends section 209 of the Clean Air Act to establish deadlines for pending and future requests for waivers under section 209(b) of the Act.

Description

For waiver requests submitted to EPA before January 31, 2006, and pending as of the date the bill is enacted, the section requires the Administrator of EPA to issue a decision on the request not later than 30 days after the date the bill is enacted but in no case later than September 30, 2007. This deadline would apply to California's request for a waiver for its greenhouse gas vehicle standards if EPA has not decided the request by the date the bill is enacted.

For waiver requests submitted to EPA after the date the bill is enacted, the section requires the Administrator of EPA to issue a decision within 180 days of EPA's receipt of the request. This deadline will ensure that all future waiver requests are decided on a timely basis by EPA.

LEGISLATIVE HISTORY

On July 12, 2007, Senator Nelson of Florida introduced S. 1785, joined by original cosponsors Senators Boxer, Lautenberg, Sanders, Feinstein, Menendez, and Cardin. Senators Whitehouse and Reed were added as cosponsors. The bill was read twice and referred to the Senate Committee on Environment and Public Works. The committee met on July 31, 2007, to consider the bill as amended by a substitute amendment. S. 1785 as revised by the substitute amendment was ordered favorably reported without amendment by a vote of 10 to 9.

HEARINGS

The Committee did not hold hearings on S. 1785 during the 110th Congress. However, the Committee held two 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 hearing entitled, "Examining the Case for the California Waiver: An Update from EPA," the committee heard testimony from Senator Nelson of Florida concerning S. 1785 and from EPA Administrator Stephen L. Johnson.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1785, as revised by the Chairman's mark amendment, on July 31, 2007. The Chairman's mark was ordered favorably reported by rollcall vote. The vote was 10 to 9 in favor of the bill as revised (Ayes—Baucus, Cardin, Carper, Clinton, Klobuchar, Lautenberg, Lieberman, Sanders, Whitehouse, Boxer. Nays—Alexander, Barrasso, Bond, Craig, Inhofe, Isakson, Vitter, Voinovich, and Warner).

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1785 does not create any additional regulatory burdens, 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 that S. 1785 would impose no Federal intergovernmental unfunded mandates on State, local or tribal governments. The bill contains no new private-sector mandates as defined in UMRA.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO estimates that enacting S. 1785 would have no significant impact on the federal budget.

Enacting the legislation would not affect direct spending or revenues. S. 1785 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.

S. 1785 would require the Administrator of the Environmental Protection Agency (EPA) to issue certain decisions within deadlines established by the bill. Those decisions concern whether states should be granted waivers to preempt federal standards for motor vehicle emissions. The bill would require EPA to issue a decision on any requests for waivers that were submitted before January 31, 2006, and are still pending on the date of enactment of S. 1785, no later than September 30, 2007. Any subsequent requests for waivers would require a determination by EPA within 180 days after the agency receives the request.

Currently, EPA is reviewing a request for a waiver for California that would permit the state to implement a regulation it approved in 2004 that is designed to reduce emissions from automobiles and regulate greenhouse gas emissions. According to EPA, enacting this bill could require the agency to redirect personnel and other resources to its ongoing review of California's request to meet the deadline established under S. 1785. CBO does not expect that EPA would require additional funds in 2007 to complete its review. Furthermore, EPA expects that any future requests for waivers would be less time-consuming than the current request from California. CBO estimates that EPA would not require any significant additional resources in subsequent years to expedite its decisions on similar requests for waivers. Thus, we estimate that implementing

this legislation would not have a significant effect on the federal budget.

The CBO staff contact for this estimate is Susanne S. Mehlman.

This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

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

* * * * *

TITLE I—AIR POLLUTION PREVENTION AND CONTROL

PART A—AIR QUALITY AND EMISSION LIMITATIONS

FINDINGS AND PURPOSES

SEC. 101. (a) The Congress finds—

(1) * * *

* * * * *

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) * * *

* * * * *

(f) WAIVERS OF PREEMPTION.—

(1) PENDING REQUESTS.—*Not later than 30 days after the date of enactment of this subsection, but in no case later than September 30, 2007, the Administrator shall issue a decision on each request for a waiver of preemption under subsection (b) that—*

(A) was submitted before January 31, 2006; and

(B) is pending as of the date of enactment of this subsection.

(2) SUBSEQUENT REQUESTS.—*With respect to a request for a waiver of preemption under subsection (b) that is submitted by a State after the date of enactment of this subsection, not later than 180 days after the date on which the Administrator re-*

ceives the request, the Administrator shall issue a decision on whether to grant the waiver.

