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LEGISLATION TO AUTHORIZE THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY TO ACCEPT, AS PART OF A SETTLEMENT, DIESEL EMISSION REDUCTION SUPPLEMENTAL ENVIRONMENTAL PROJECTS

FEBRUARY 28, 2008.—Ordered to be printed

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

REPORT

[To accompany S. 2146]

The Committee on Environment and Public Works, to which was referred the bill (S. 2146) to authorize the Administrator of the Environmental Protection Agency to accept, as part of a settlement, diesel emission reduction Supplemental Environmental Projects, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this legislation is to clarify that the Administrator of the Environmental Protection Agency (EPA) is authorized to accept, as part of a settlement, diesel emission reduction Supplemental Environmental Projects.

GENERAL STATEMENT AND BACKGROUND

EPA estimates there are 11 million diesel engines in America lacking available control technology that could greatly reduce harmful pollution. The On and Off-Road vehicles using these engines produce more than 1000 tons of particulate matter every day. The pollution causes approximately 21,000 premature deaths in the United States each year, plus tens of thousands of Americans suffering from asthma attacks, heart attacks, and respiratory problems.

Recognizing these harmful effects, EPA now requires all new on-road heavy duty diesel vehicles to be installed with pollution control technology. EPA estimates that when the 2001 Highway and 2004 Non-road Diesel Engine rules are fully implemented harmful

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diesel emissions will be reduced by more than 80 percent from 2000 levels. The pollution prevented will have profound economic and health benefits. EPA estimates that for every dollar spent on the technology $16 of benefit will be generated—totaling $66 billion in economic and health benefits annually.

In addition to reducing pollution from newly constructed diesel engines, EPA and Congress have acted to retrofit existing diesel vehicles with pollution control technology. EPA has been using Supplemental Environmental Projects ("SEPs") to fund diesel retrofits, particularly on school buses. These projects are undertaken by a defendant as part of a settlement in an environmental enforcement action brought by EPA or the Department of Justice. They specifically do not include actions which a defendant is otherwise legally required to perform. So they generate environmental and public health benefits that would not have occurred without the settlement.

SEPs have been an important funding stream for diesel retrofit projects. In December of 2007, EPA entered into a settlement with American Electric Power containing a federal SEP designating as much as $21 million for diesel retrofits. In February 2006, DaimlerChrysler entered into a settlement with EPA containing a SEP for $3 million for diesel retrofits. In 2004, Toyota agreed to spend $20 million on a diesel retrofit SEP aimed specifically at school buses. Archer Daniel Midlands has also spent upwards of $6 million retrofitting school buses as part of a SEP. Between 2003 and 2006 nearly $62 million in diesel retrofit projects have been funded by SEPs. Of all the diesel retrofits installed between 2003 and 2006, 37% were financed in whole or in part by SEPs.

Also recognizing the importance of reducing pollution from existing diesel engines, in 2005, Congress included the Diesel Emissions Reduction Act of 2005 as part of the enacted 2005 Energy Policy Act. The Diesel Emissions Reduction Act established national and State-level grant and loan programs for diesel emission reduction projects and programs. Congress appropriated $49.2 million in funds for this program for the first time in the FY2008 Omnibus Appropriations Act.

Following Congressional action to fund the diesel retrofit program, EPA apparently has concluded that the Agency generally should cease funding diesel retrofit projects via SEPs. EPA believes that allowing diesel retrofits to be funded by SEPs once Congress has specifically appropriated monies for that purpose could violate the Miscellaneous Receipts Act. This legislation is intended to clarify that Congress did not intend the funding of the Diesel Emissions Reduction Act to affect EPA's ability to enter into SEPs that fund diesel retrofit projects.

The Miscellaneous Receipts Act was passed in order to ensure that government agencies did not bypass the appropriations authority of Congress by augmenting their budgets via other means, for example: user fees, fees for training courses, parking fees, contract and lease fees and revenues, monetary awards in court cases involving the agencies, court costs and fees, or civil penalties. It is a misunderstanding of Congressional intent to interpret the use of funds to mitigate environmental damage as part of an environmental enforcement agreement as an augmentation of a Congressionally funded grant program to retrofit diesel engines with pollution control technology. Congress never intended the Diesel Emissions Reduction Act to limit EPA's ability to negotiate additional diesel retrofit projects as part of enforcement settlements.

OBJECTIVES OF THE LEGISLATION

S. 2146 clarifies Congressional intent of the Diesel Emissions Reduction Act. S. 2146 authorizes EPA to continue to use SEPs to fund diesel retrofits regardless of the congressional funding of the Diesel Emissions Reduction Act, as long as such SEPs: (1) protect human health and the environment; (2) are related to the alleged violations; (3) do not constitute activities the defendant would otherwise be required to perform; and (4) does not provide funds for the agency to carry out internal operations.

LEGISLATIVE HISTORY

On February 6, 2008, the Committee on Environment and Public Works favorably reported S. 2146 without amendment by voice vote. There were no rollcall votes.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

The bill 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. 2146 would not impose Federal intergovernmental unfunded mandates on State, local, or tribal governments.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Section 403 of the Congressional Budget and Impoundment Control Act requires a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report.

CBO estimates that enacting S. 2146 would have no significant impact on the federal budget. Enacting the legislation could affect revenues; however, CBO estimates that any such impact would be insignificant.

S. 2146 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

According to the Environmental Protection Agency (EPA), most environmental violations by businesses or individuals are resolved through settlement agreements. As part of a settlement, an alleged violator may voluntarily agree to undertake an environmentally beneficial project related to the violation in exchange for a reduction in civil monetary penalties. Such projects are known as supplemental environmental projects (SEPs). Civil penalties are recorded on the budget as miscellaneous receipts (revenues).

Under EPA's SEP policy, if the agency receives a specific appropriation for grants under the Diesel Emission Reduction Act (DERA), the agency may no longer agree to diesel SEPs as part of any enforcement settlement. Because the DERA grant program was appropriated about $50 million in 2008, EPA cannot agree to any diesel SEPs during 2008.

S. 2146 would allow EPA to accept diesel emission reduction SEPs as part of a settlement of any alleged violations of environmental laws under certain conditions. To the extent the diesel SEPs permitted under this legislation would decrease the amount of penalties that otherwise would have been deposited in the Treasury, the federal government would realize some loss of revenues. However, based on information from EPA, CBO expects that in most cases, the diesel SEPs would displace other types of SEPs within a particular settlement agreement. Thus, we estimate that any loss of revenues would be less than $500,000 annually.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

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