

110TH CONGRESS  
2D SESSION

# S. 2555

To permit California and other States to effectively control greenhouse gas emissions from motor vehicles, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2008

Mrs. BOXER (for herself, Mrs. FEINSTEIN, Mr. LIEBERMAN, Mr. LAUTENBERG, Mr. CARDIN, Mr. WHITEHOUSE, Mr. SANDERS, Mrs. CLINTON, Mr. LEAHY, Mr. KERRY, Mr. OBAMA, Mr. NELSON of Florida, Mr. DODD, Mr. KENNEDY, Ms. MIKULSKI, Ms. COLLINS, Ms. SNOWE, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To permit California and other States to effectively control greenhouse gas emissions from motor vehicles, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reducing Global  
5 Warming Pollution from Vehicles Act of 2008”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1           (1) the State of California has regulated motor  
2 vehicle air emissions more stringently than the Fed-  
3 eral Government for more than 40 years;

4           (2) in recognition of the pioneering role of the  
5 State in protecting public health and welfare from  
6 motor vehicle emissions, Congress enacted section  
7 209(b) of the Clean Air Act (42 U.S.C. 7543(b))  
8 that allows the Administrator of the Environmental  
9 Protection Agency (referred to in this Act as the  
10 “Administrator”) to waive Federal preemption of  
11 motor vehicle standards established by the State;

12           (3) on December 21, 2005, the State requested  
13 a waiver of preemption under that Act for the regu-  
14 lation of the State to control greenhouse gas emis-  
15 sions from motor vehicles;

16           (4) the regulation of the State requires a reduc-  
17 tion in the emissions of greenhouse gases from cars  
18 and light trucks sold in the State;

19           (5) once a waiver is granted to the State of  
20 California for that regulation, other States may  
21 adopt the vehicle emission standards established by  
22 the State of California;

23           (6) as of the date of introduction of this Act—

24                   (A) 14 other States have adopted or are  
25                   adopting the California standards, including Ar-

1            Arizona, Connecticut, Florida, Maine, Maryland,  
2            Massachusetts, New Jersey, New Mexico, New  
3            York, Oregon, Pennsylvania, Rhode Island,  
4            Vermont, and Washington;

5            (B) at least 4 additional States are moving  
6            toward adopting the California standards, in-  
7            cluding Colorado, Delaware, Illinois, and Utah;  
8            and

9            (C) taken together, those 19 States rep-  
10           present more than half of the population of the  
11           United States;

12           (7) the comments submitted to the Adminis-  
13           trator overwhelmingly supported the request of the  
14           State of California for a waiver;

15           (8) according to legal papers filed by the Cali-  
16           fornia Attorney General, of the approximately  
17           98,000 comments in the docket of the Environ-  
18           mental Protection Agency, docket, more than 99.9  
19           percent supported the petition of the State;

20           (9) notwithstanding that support, on December  
21           19, 2007, Administrator Stephen Johnson took the  
22           extraordinary step of denying the request of the  
23           State, dated December 21, 2005, for the waiver;

24           (10) the flat denial by the Administrator of the  
25           waiver request was unprecedented;

1           (11) according to the Congressional Research  
2           Service, the State of California has requested waiv-  
3           ers of preemption under section 209(b) of the Clean  
4           Air Act (42 U.S.C. 7543(b)) for vehicle emission  
5           standards more than 50 times since that provision  
6           was enacted, and the Administrator has never out-  
7           right denied such a request, but instead always  
8           granted the requests, in whole or in part;

9           (12) the denial of the Administrator of the  
10          waiver reportedly overrode the overwhelming evi-  
11          dence presented by the technical and legal staff of  
12          the Environmental Protection Agency;

13          (13) the Administrator sought to justify the de-  
14          nial of the waiver by arguing that the waiver would  
15          create a “confusing patchwork” of State regulations;

16          (14) in fact, no such patchwork would result  
17          from the granting of the waiver because, under the  
18          Clean Air Act (42 U.S.C. 6401 et seq.), if the waiver  
19          were granted, there would continue to be 2 stand-  
20          ards for vehicles, as there have been for 30 years—  
21          a weaker Federal standard, and a more stringent  
22          California standard adopted by many States across  
23          the United States;

24          (15) the benefits of permitting the State of  
25          California to establish more stringent vehicle stand-

1 ards, which are subsequently adopted by other  
2 States, are well documented;

3 (16) the National Academy of Sciences found in  
4 2006 that in “forcing technology development, Cali-  
5 fornia has been a laboratory for emissions-control in-  
6 novations. . . . The original reasons for which Con-  
7 gress authorized California to have a separate set of  
8 standards remain valid. . . . California should con-  
9 tinue its pioneering role in setting mobile-source  
10 emissions standards. The role will aid the State’s ef-  
11 forts to achieve air quality goals and will allow it to  
12 continue to be a proving ground for new emissions-  
13 control technologies that benefit California and the  
14 rest of the Nation.”;

15 (17) the Administrator also sought to justify  
16 the denial of the waiver by arguing that the national  
17 fuel economy standards for vehicles enacted by the  
18 Energy Independence and Security Act of 2007  
19 (Public Law 110–140) would be “more effective” at  
20 reducing emissions than the California standards;

21 (18) however, an analysis by the California Air  
22 Resources Board shows that the California stand-  
23 ards, once fully adopted, would result, by 2020, in  
24 approximately twice as large a cumulative reduction  
25 of carbon dioxide emissions in California as, and

1 more than an 80 percent greater reduction in carbon  
2 dioxide emissions nationally than, would be achieved  
3 under the Federal program;

4 (19) the argument of the Administrator that  
5 national fuel economy standards eliminate the need  
6 for vehicle greenhouse gas emission controls also  
7 runs counter to the analysis of the Supreme Court  
8 in the landmark April 2007 decision of *Massachu-*  
9 *setts v. Environmental Protection Agency* (127 S.  
10 Ct. 1438), in which the Supreme Court—

11 (A) rejected the argument of the Adminis-  
12 trator that the authority of the Department of  
13 Transportation to regulate vehicle fuel effi-  
14 ciency undercuts the authority of the Adminis-  
15 trator to regulate greenhouse gases from vehi-  
16 cles; and

17 (B) noted that the fact “that DOT [the  
18 Department of Transportation] sets mileage  
19 standards in no way licenses EPA [the Environ-  
20 mental Protection Agency] to shirk its environ-  
21 mental responsibilities. EPA has been charged  
22 with protecting the public’s ‘health’ and ‘wel-  
23 fare,’ ... a statutory obligation wholly inde-  
24 pendent of DOT’s mandate to promote energy  
25 efficiency ... The two obligations may overlap,

1 but there is no reason to think the two agencies  
2 cannot both administer their obligations and yet  
3 avoid inconsistency.”; and

4 (20) it is the sense of Congress that the denial  
5 by the Administrator of the request by the State of  
6 California for the waiver is not supported by science,  
7 precedent, or applicable law.

8 (b) PURPOSES.—The purposes of this Act are—

9 (1) to permit the State of California and other  
10 States to immediately proceed under the regulation  
11 of the State of California to control greenhouse gas  
12 emissions from motor vehicles, rather than forcing  
13 the States to litigate for what could be several years  
14 to vindicate their rights, while climate change con-  
15 tinues to threaten public health and the environ-  
16 ment; and

17 (2) to provide certainty to automakers, the  
18 States, and the public about future regulatory re-  
19 quirements for greenhouse gas emissions from motor  
20 vehicles.

21 **SEC. 3. WAIVER OF PREEMPTION FOR CALIFORNIA GREEN-**  
22 **HOUSE GAS EMISSION REGULATION FOR VE-**  
23 **HICLES.**

24 Section 209 of the Clean Air Act (42 U.S.C. 7543)  
25 is amended by adding at the end the following:

1       “(f) WAIVER.—Notwithstanding subsection (b) or  
2 any other provision of law, the application for a waiver  
3 of preemption dated December 21, 2005, submitted to the  
4 Administrator pursuant to subsection (b) by the State of  
5 California for the regulation of that State to control green-  
6 house gas emissions from motor vehicles shall be consid-  
7 ered to be approved.”.

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