

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

JUNE 10, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3754]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3754) 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, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3754 is to authorize the Administrator of the Environmental Protection Agency (EPA) to accept, as part of a settlement, diesel emissions reduction Supplemental Environmental Projects (SEPs). Such diesel emission reduction projects may be accepted as part of settling alleged environmental violations provided that the projects: protect human health or the environment; are related to the underlying alleged violation; do not constitute activities that the defendant would otherwise be legally required to perform; and do not provide funds for the staff of the Agency or for the contractors to carry out the Agency's internal operations.

BACKGROUND AND NEED FOR LEGISLATION

In the United States, on-road and off-road diesel engines and vehicles account for more than half of the nitrogen oxide and particulate matter emissions from mobile sources. According to the testimony before the Subcommittee on Energy and Air Quality on February 19, 2008, these vehicles and engines produce more than 1,000 tons of particulate matter every day, resulting in approximately 21,000 premature deaths every year, as well as increased asthma attacks, heart attacks, and respiratory problems.

In response to the need for pollution reductions in this area, EPA now requires all new on-road and off-road heavy duty vehicles and engines to meet emission standards, which require the use of pollution control technology. Given the long life cycle of diesel engines, however, many of the older engines will remain in vehicle fleets for years. Programs to replace or retrofit these older engines with pollution control technology have proven a reliable and cost-effective method for reducing pollution from these sources. In recognition of this, both Congress and EPA have acted to promote clean diesel technologies.

While EPA grants have accounted for some clean diesel programs, private parties have also funded clean diesel programs as part of settlements of cases in which EPA alleged violations of the Clean Air Act. During the period between 2003 and 2006, 37 percent of all diesel retrofit projects were funded in whole or in part by SEPs, with funding reaching nearly \$62 million.

In Subtitle G, Sections 791–797 of the Energy Policy Act of 2005, Congress authorized \$1 billion over 5 years for the purpose of providing grants and revolving loans to reduce emissions from diesel engines. The Consolidated Appropriations Act, 2008 (which became public law 110–161) contained the first specific appropriation for these diesel emission reduction programs, but appropriated only \$49.2 million. EPA estimates that these programs, if fully funded, would reduce particulate matter emissions by 70,000 tons, generate nearly \$20 billion in economic benefit, and return \$13 of benefit for every \$1 invested.

As a result of specific appropriation of funds by Congress for clean diesel programs for fiscal year 2008, EPA concluded that it could violate the Miscellaneous Receipts Act to allow private parties to include diesel emissions reduction projects as part of settlements. The Miscellaneous Receipts Act (MRA) prevents Executive

Branch agencies from bypassing the Congressional appropriations process by augmenting their budgets through other means. It is the position of EPA that the MRA prohibits it from accepting SEPs for activities explicitly covered by a specific appropriation or committee earmark.

H.R. 3754 authorizes EPA to continue its policy of allowing diesel emission reduction SEPs as a part of settlements of any alleged violation of environmental law, notwithstanding the Miscellaneous Receipts Act. This Act continues EPA's policy requiring that such projects: protect human health or the environment; are related to the underlying alleged violation; do not constitute activities that the defendant would otherwise be legally required to perform; and do not provide funds for the staff of the Agency or for contractors to carry out the Agency's internal operations. For purposes of this Act a diesel emission reduction project shall be considered "related to" any Clean Air Act violation.

H.R. 3754 is identical to S. 2146, which passed the Senate on February 29, 2008.

HEARINGS

The Subcommittee on Energy and Air Quality held on Wednesday, February 13, 2008, a hearing entitled, "H.R. 3754: Authorizing Supplemental Environmental Projects to Incent Reductions of Diesel Emissions." The Subcommittee received testimony from the following witnesses: The Honorable Jim Costa, Representative of the 20th District of California; Mr. Tim Regan, Senior Vice President, Corning Incorporated; and Mr. Conrad Schnieder, Advocacy Director, Clean Air Task Force.

COMMITTEE CONSIDERATION

Upon conclusion of the Subcommittee hearing held on February 13, 2008, the Subcommittee on Energy and Air Quality immediately proceeded to meet in open markup session to consider H.R. 3754. The Subcommittee favorably forwarded H.R. 3754 to the full Committee for consideration by a voice vote. No amendments were offered during Subcommittee consideration. On Thursday, March 13, 2008, the full Committee met in open markup session and ordered H.R. 3754 favorably reported to the House by a voice vote. No amendments were offered during full Committee consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3754 reported to the House.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Subcommittee on Energy and Air Quality held a legislative hearing on H.R. 3754, and the oversight findings of the Committee regarding the bill are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 3754 is to clarify Congressional intent to authorize EPA to continue using Supplemental Environmental Projects to fund diesel emission reduction projects notwithstanding the Miscellaneous Receipts Act, as long as such SEPs: protect human health and the environment; are related to the alleged violation; do not constitute activities the defendant would otherwise be required to perform; and, do not provide funds for the staff of the Agency or for the contractors to carry out the Agency's internal operations.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority and revenues regarding H.R. 3754 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3754 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 3754 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 3754 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MARCH 25, 2008.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3754, a bill 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.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3754—A bill 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

CBO estimates that enacting H.R. 3754 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.

H.R. 3754 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.

H.R. 3754 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.

On February 25, 2008, CBO transmitted a cost estimate for S. 2146 as ordered reported by the Senate Committee on Environment and Public Works on February 6, 2008. That bill is identical to H.R. 3754, and thus the cost estimates are the same.

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

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3754 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 3754.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 3754 is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian Tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 3754 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. EPA authority to accept diesel emissions reduction supplemental environmental projects

Section 1 of H.R. 3754 provides the Environmental Protection Agency authority to accept diesel emission Supplemental Environmental Projects as part of a settlement of any alleged violations of environmental law, provided that the projects: protect human health or the environment; are related to the underlying alleged violations; do not constitute activities defendants would otherwise be legally required to perform; and do not provide funds for the Agency's internal operations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Regarding clause 3(e) of rule XIII of the Rules of the House of Representatives, H.R. 3754 does not amend any existing law.