

117TH CONGRESS
1ST SESSION

S. 216

To direct the Administrator of the Environmental Protection Agency to establish a grant program to award grants to eligible entities to purchase and install, as applicable, zero emissions port equipment and technology, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2021

Mr. MERKLEY (for himself, Ms. WARREN, Mrs. GILLIBRAND, Mr. WYDEN, Mrs. FEINSTEIN, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To direct the Administrator of the Environmental Protection Agency to establish a grant program to award grants to eligible entities to purchase and install, as applicable, zero emissions port equipment and technology, 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 “Climate Smart Ports
5 Act of 2021”.

1 **SEC. 2. CLIMATE SMART PORTS GRANT PROGRAM.**

2 (a) DEFINITIONS.—In this section:

3 (1) ACTIVE DUTY.—The term “active duty” has
4 the meaning given the term in section 101(d) of title
5 10, United States Code.

6 (2) ADMINISTRATOR.—The term “Adminis-
7 trator” means the Administrator of the Environ-
8 mental Protection Agency.

9 (3) ALTERNATIVE EMISSIONS CONTROL TECH-
10 NOLOGY.—The term “alternative emissions control
11 technology” means a technology, technique, or meas-
12 ure that—

13 (A) captures the emissions of nitrogen
14 oxide, particulate matter, reactive organic com-
15 pounds, and greenhouse gases from the auxil-
16 iary engine and auxiliary boiler of an ocean-
17 going vessel at berth;

18 (B) is verified or approved by a State or
19 Federal air quality regulatory agency;

20 (C) the use of which achieves at least the
21 equivalent reduction of emissions as the use of
22 shore power for an ocean-going vessel at berth;

23 (D) the use of which results in reducing
24 emissions of the auxiliary engine of an ocean-
25 going vessel at berth to a rate of less than—

1 (i) 2.8 grams per kilowatt-hour for ni-
 2 trogen oxide;

3 (ii) 0.03 grams per kilowatt-hour for
 4 fine particulate matter (PM_{2.5}); and

5 (iii) 0.1 grams per kilowatt-hour for
 6 reactive organic compounds; and

7 (E) reduces the emissions of the auxiliary
 8 engine and boiler of an ocean-going vessel at
 9 berth by at least 80 percent of the default emis-
 10 sions rate, which is, as of the date of enactment
 11 of this Act, 13.8 grams per kilowatt-hour.

12 (4) CRITERIA POLLUTANT.—The term “criteria
 13 pollutant” means—

14 (A) ground-level ozone;

15 (B) particulate matter;

16 (C) carbon monoxide;

17 (D) lead;

18 (E) sulfur dioxide; and

19 (F) nitrogen dioxide.

20 (5) DISTRIBUTED ENERGY RESOURCE.—

21 (A) IN GENERAL.—The term “distributed
 22 energy resource” means an energy resource
 23 that—

24 (i) is located on or near a customer
 25 site;

- 1 (ii) is operated on the customer side
- 2 of the electric meter; and
- 3 (iii) is interconnected with the electric
- 4 grid.

5 (B) INCLUSIONS.—The term “distributed
6 energy resource” includes—

- 7 (i) clean electric generation;
- 8 (ii) customer electric efficiency meas-
- 9 ures;
- 10 (iii) electric demand flexibility; and
- 11 (iv) energy storage.

12 (6) ELIGIBLE ENTITY.—The term “eligible enti-
13 ty” means—

- 14 (A) a port authority;
- 15 (B) a State, regional, local, or Tribal agen-
- 16 cy that has jurisdiction over a port authority or
- 17 a port;
- 18 (C) an air pollution control district or air
- 19 quality management district; and
- 20 (D) a private or nonprofit entity, applying
- 21 for a grant awarded under this section in col-
- 22 laboration with another entity described in sub-
- 23 paragraphs (A) through (C), that owns or uses
- 24 cargo or transportation equipment at a port.

1 (7) ENERGY STORAGE SYSTEM.—The term “en-
2 ergy storage system” means a system, piece of
3 equipment, facility, or technology that—

4 (A) is capable of absorbing energy, storing
5 energy for a period of time, and dispatching
6 that stored energy; and

7 (B) uses a mechanical, electrical, chemical,
8 electrochemical, or thermal process to store en-
9 ergy that—

10 (i) was generated at an earlier time
11 for use at a later time; or

12 (ii) was generated from a mechanical
13 process, and would otherwise be wasted,
14 for delivery at a later time.

15 (8) FULLY AUTOMATED CARGO HANDLING
16 EQUIPMENT.—The term “fully automated cargo
17 handling equipment” means cargo handling equip-
18 ment that—

19 (A) is remotely operated or remotely mon-
20 itored; and

21 (B) with respect to the use of that equip-
22 ment, does not require the exercise of human
23 intervention or control.

24 (9) MAJOR URBAN AREA.—The term “major
25 urban area” means a metropolitan statistical area

1 within the United States with an estimated popu-
 2 lation of 1,500,000 or more.

3 (10) NONATTAINMENT AREA.—The term “non-
 4 attainment area” has the meaning given the term in
 5 section 171 of the Clean Air Act (42 U.S.C. 7501).

6 (11) PORT.—The term “port” includes a mari-
 7 time port and an inland port.

8 (12) PORT AUTHORITY.—The term “port au-
 9 thority” means a governmental or quasi-govern-
 10 mental authority formed by a legislative body to op-
 11 erate a port.

12 (13) PROJECT LABOR AGREEMENT.—The term
 13 “project labor agreement” means a pre-hire collec-
 14 tive bargaining agreement with 1 or more labor or-
 15 ganization that—

16 (A) establishes the terms and conditions of
 17 employment for a specific construction project;
 18 and

19 (B) is described in section 8(f) of the Na-
 20 tional Labor Relations Act (29 U.S.C. 158(f)).

21 (14) REGISTERED APPRENTICE.—The term
 22 “registered apprentice” means a person who is par-
 23 ticipating in a registered apprenticeship program.

24 (15) REGISTERED APPRENTICESHIP PRO-
 25 GRAM.—The term “registered apprenticeship pro-

gram” means a program registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.).

(16) SHORE POWER.—The term “shore power” means the provision of shoreside electrical power to a ship at berth that has shut down main and auxiliary engines.

(17) STATE APPRENTICESHIP AGENCY.—The term “State Apprenticeship Agency” has the meaning given the term in section 29.2 of title 29, Code of Federal Regulations (as in effect on January 1, 2020).

(18) ZERO EMISSIONS PORT EQUIPMENT AND TECHNOLOGY.—

(A) IN GENERAL.—The term “zero emissions port equipment and technology” means equipment and technology that—

(i) is used at a port; and

(ii)(I) produces zero exhaust emissions of—

(aa) any criteria pollutant and precursor of a criteria pollutant; and

(bb) any greenhouse gas, other than water vapor; or

1 (II) captures 100 percent of the ex-
 2 haust emissions produced by an ocean-
 3 going vessel at berth.

4 (B) INCLUSIONS.—The term “zero emis-
 5 sions port equipment and technology” in-
 6 cludes—

- 7 (i) any equipment that handles cargo;
- 8 (ii) a drayage truck that transports
- 9 cargo;
- 10 (iii) a train that transports cargo;
- 11 (iv) port harbor craft;
- 12 (v) a distributed energy resource;
- 13 (vi) an energy storage system;
- 14 (vii) electrical charging infrastructure;
- 15 (viii) shore power or an alternative
- 16 emissions control technology; and
- 17 (ix) an electric transport refrigeration
- 18 unit.

19 (b) ESTABLISHMENT.—Subject to the availability of
 20 appropriations, not later than 180 days after the date of
 21 enactment of this section, the Administrator shall estab-
 22 lish a grant program to award grants to eligible entities
 23 to purchase and install, as applicable, zero emissions port
 24 equipment and technology.

25 (c) APPLICATION.—

1 (1) IN GENERAL.—To be eligible to receive a
 2 grant under this section, an eligible entity shall sub-
 3 mit to the Administrator an application at such
 4 time, in such manner, and containing such informa-
 5 tion as the Administrator may require.

6 (2) PRIORITY.—The Administrator shall
 7 prioritize awarding grants under this section to eligi-
 8 ble entities based on—

9 (A) the degree to which the proposed use
 10 of the grant will—

11 (i) reduce greenhouse gas emissions;

12 (ii) reduce emissions of any criteria
 13 pollutant and precursor of a criteria pollut-
 14 ant;

15 (iii) reduce hazardous air pollutant
 16 emissions; and

17 (iv) reduce public health disparities in
 18 communities that receive a dispropor-
 19 tionate quantity of air pollution from a
 20 port;

21 (B) the amount of matching, non-Federal
 22 funds expected to be used by an applicant to
 23 purchase and install, as applicable, zero emis-
 24 sions port equipment and technology;

1 (C) whether the applicant will use the
2 grant to purchase and install, as applicable,
3 zero emissions port equipment and technology
4 that is produced in the United States;

5 (D) whether the applicant will meet the
6 utilization requirements for registered appren-
7 tices established by the Secretary of Labor or
8 a State Apprenticeship Agency, as applicable;
9 and

10 (E) whether the applicant will recruit and
11 retain skilled workers through a State-approved
12 joint labor-management apprenticeship pro-
13 gram, as applicable.

14 (d) USE OF FUNDS.—

15 (1) IN GENERAL.—A grant awarded under this
16 section shall be used to purchase and install, as ap-
17 plicable, zero emissions port equipment and tech-
18 nology.

19 (2) PROHIBITED USE.—

20 (A) IN GENERAL.—An eligible entity may
21 not use a grant awarded under this section to
22 purchase or install fully automated cargo han-
23 dling equipment or terminal infrastructure that
24 is designed for fully automated cargo handling
25 equipment.

1 (B) HUMAN-OPERATED ZERO EMISSIONS
2 PORT EQUIPMENT AND TECHNOLOGY.—Nothing
3 in subparagraph (A) prohibits an eligible entity
4 from using a grant awarded under this section
5 to purchase human-operated zero emissions
6 port equipment and technology or infrastruc-
7 ture that supports the human-operated zero
8 emissions port equipment and technology.

9 (3) COST-SHARING.—

10 (A) IN GENERAL.—Except as provided in
11 subparagraph (B), an eligible entity may not
12 use a grant awarded under this section to cover
13 more than 70 percent of the cost of purchasing
14 and installing, as applicable, zero emissions port
15 equipment and technology.

16 (B) CERTAIN GRANTS.—With respect to a
17 grant of \$3,000,000 or more, an eligible entity
18 may use the grant to cover not more than 85
19 percent of the cost of purchasing and installing
20 zero emissions port equipment and technology if
21 that eligible entity certifies to the Administrator
22 that—

23 (i) the grant will be used, at least in
24 part, to employ laborers or mechanics to

1 install zero emissions port equipment and
2 technology; and

3 (ii) the eligible entity is a party to a
4 project labor agreement or requires that
5 each subgrantee of the eligible entity, and
6 any subgrantee of that subgrantee at any
7 tier, that performs the installation partici-
8 pate in a project labor agreement.

9 (4) PROJECT LABOR.—An eligible entity that
10 uses a grant awarded under this section to install
11 zero emissions port equipment and technology shall
12 ensure, to the greatest extent practicable, that any
13 subgrantee of the eligible entity, and any subgrantee
14 of that subgrantee, at any tier, that carries out the
15 installation employs at least 40 percent of the labor-
16 ers or mechanics for the installation from among in-
17 dividuals who—

18 (A) are domiciled—

19 (i) if the applicable installation area is
20 a major urban area, not further than 15
21 miles from the installation area; and

22 (ii) if the applicable installation area
23 is not a major urban area, not further
24 than 50 miles from the installation area;

1 (B) are displaced and unemployed energy
2 workers;

3 (C) are members of the Armed Forces
4 serving on active duty, separated from active
5 duty, or retired from active duty;

6 (D) have been incarcerated or served time
7 in a juvenile or adult detention or correctional
8 facility, or been placed on probation, community
9 supervision, or in a diversion scheme;

10 (E) have a disability;

11 (F) are homeless;

12 (G) are receiving public assistance;

13 (H) lack a general education diploma or
14 high school diploma;

15 (I) are emancipated from the foster care
16 system; or

17 (J) are registered apprentices with fewer
18 than 15 percent of the required graduating ap-
19 prentice hours in a program.

20 (e) WAGES.—

21 (1) IN GENERAL.—All laborers and mechanics
22 employed by a subgrantee of an eligible entity, and
23 any subgrantee of a subgrantee at any tier, to per-
24 form construction, alteration, installation, or repair
25 work that is assisted, in whole or in part, by a grant

1 awarded under this section, shall be paid wages at
2 rates not less than those prevailing on similar con-
3 struction, alteration, installation, or repair work in
4 the locality as determined by the Secretary of Labor
5 in accordance with subchapter IV of chapter 31 of
6 title 40, United States Code.

7 (2) LABOR STANDARDS.—With respect to the
8 labor standards in this subsection, the Secretary of
9 Labor shall have the authority and functions set
10 forth in Reorganization Plan Numbered 14 of 1950
11 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of
12 title 40, United States Code.

13 (f) OUTREACH.—

14 (1) IN GENERAL.—Not later than 90 days after
15 funds are made available to carry out this section,
16 the Administrator shall develop and carry out an
17 educational outreach program to promote and ex-
18 plain the grant program established under sub-
19 section (b) to prospective grant recipients.

20 (2) PROGRAM COMPONENTS.—In carrying out
21 the outreach program developed under paragraph
22 (1), the Administrator shall—

23 (A) inform prospective grant recipients
24 how to apply for a grant awarded under this
25 section;

1 (B) describe to prospective grant recipients
 2 the benefits of available zero emissions port
 3 equipment and technology;

4 (C) explain to prospective grant recipients
 5 the benefits of participating in the grant pro-
 6 gram established under this section; and

7 (D) facilitate the sharing of best practices
 8 and lessons learned between grant recipients
 9 and prospective grant recipients with respect to
 10 how to apply for and use grants awarded under
 11 this section.

12 (g) REPORTS.—

13 (1) REPORT TO ADMINISTRATOR.—Not later
 14 than 90 days after the date on which an eligible en-
 15 tity is awarded a grant under this section, that eligi-
 16 ble entity shall submit to the Administrator a report
 17 containing such information as the Administrator
 18 shall require.

19 (2) ANNUAL REPORT TO CONGRESS.—Not later
 20 than January 31, 2022, and annually thereafter for
 21 each calendar year subsequent to a calendar year
 22 during which a grant was awarded under this sec-
 23 tion, the Administrator shall submit to Congress,
 24 and make available on the website of the Environ-
 25 mental Protection Agency, a report that includes,

1 with respect to each grant awarded under this sec-
 2 tion during the preceding calendar year—

3 (A) the name and location of the eligible
 4 entity that was awarded a grant;

5 (B) the amount of the grant that the eligi-
 6 ble entity was awarded;

7 (C) the name and location of the port
 8 where the zero emissions port equipment and
 9 technology that was purchased and installed, as
 10 applicable, with the grant was used;

11 (D) an estimate of the impact of the zero
 12 emissions port equipment and technology on re-
 13 ducing—

14 (i) greenhouse gas emissions;

15 (ii) emissions of criteria pollutants
 16 and precursors of criteria pollutants;

17 (iii) hazardous air pollutant emissions;

18 and

19 (iv) public health disparities; and

20 (E) any other information the Adminis-
 21 trator determines is necessary to understand
 22 the impact of grants awarded under this sec-
 23 tion.

24 (h) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There is authorized to be
 2 appropriated to the Administrator to carry out this
 3 section \$1,000,000,000 for each of fiscal years 2022
 4 through 2031.

5 (2) NONATTAINMENT AREAS.—To the max-
 6 imum extent practicable, 25 percent of amounts
 7 made available to carry out this section in each fis-
 8 cal year shall be used to award grants to eligible en-
 9 tities to provide zero emissions port equipment and
 10 technology to ports that are in nonattainment areas.

11 **SEC. 3. ENERGY POLICY ACT OF 2005 AUTHORIZATION OF**
 12 **APPROPRIATIONS FOR PORT AUTHORITIES.**

13 Section 797 of the Energy Policy Act of 2005 (42
 14 U.S.C. 16137) is amended by adding at the end the fol-
 15 lowing:

16 “(c) PORT AUTHORITIES.—In addition to amounts
 17 made available under subsection (a), there is authorized
 18 to be appropriated \$50,000,000 for each of fiscal years
 19 2022 through 2026 to award grants, rebates, or loans
 20 under section 792 to eligible entities to carry out projects
 21 that reduce emissions at ports.”.

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