117TH CONGRESS
2D SESSION

S. 5263

To amend the Clean Air Act to create a national zero-emission vehicle standard, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2022

Mr. MERKLEY (for himself and Mr. WHITEHOUSE) 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 amend the Clean Air Act to create a national zero-emission vehicle standard, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Zero-Emission Vehicles Act of 2022’’ or the ‘‘ZEVs Act of 2022’’.

SEC. 2. NATIONAL ZERO-EMISSION VEHICLE STANDARD.

Part A of title II of the Clean Air Act (42 U.S.C. 7521 et seq.) is amended by adding at the end the following:

"SEC. 220. NATIONAL ZERO-EMISSION VEHICLE STANDARD.

''(a) DEFINITIONS.—In this section:

''(1) BASE QUANTITY OF NEW PASSENGER VEHICLES.—The term 'base quantity of new passenger vehicles' means the total quantity of new passenger vehicles delivered for sale by a vehicle manufacturer during the most recent model year.

''(2) PASSENGER VEHICLE.—The term 'passenger vehicle' has the meaning given the term 'passenger motor vehicle' in section 32101 of title 49, United States Code.

''(3) QUALIFIED ELECTRIC VEHICLE.—The term 'qualified electric vehicle' means a passenger vehicle that is—

''(A) a new clean vehicle (as defined in section 30D(d) of the Internal Revenue Code of 1986); or

''(B) a new qualified fuel cell motor vehicle (as defined in section 30B(b)(3) of the Internal Revenue Code of 1986).

''(4) RETIRE.—The term 'retire', with respect to a zero-emission vehicle credit, means to disqualify the zero-emission vehicle credit for any subsequent use under this section, including sale, transfer, exchange, or submission in satisfaction of a compliance obligation.

"(5) VEHICLE MANUFACTURER.—

"(A) IN GENERAL.—The term 'vehicle manufacturer' means an entity that—

"(i) engaged in the manufacturing of new passenger vehicles; and

"(ii) sold not fewer than 100 new passenger vehicles to ultimate purchasers in the United States within the current or previous calendar year, either directly or through an affiliate, such as a dealer.

"(B) EXCLUSIONS.—The term 'vehicle manufacturer' does not include—

"(i) a motor vehicle parts supplier; or

"(ii) a dealer.

"(6) ZERO-EMISSION VEHICLE.—The term 'zero-emission vehicle' means a passenger vehicle that produces zero exhaust emissions of any criteria pollutant, precursor pollutant, or greenhouse gas, other than water vapor, in any mode of operation or condition, as determined by the Administrator.

"(b) COMPLIANCE.—For model year 2026 and each model year thereafter, each vehicle manufacturer shall meet the requirements of subsections (c) and (d) by submitting to the Administrator, not later than April 1 of the following calendar year, as applicable—

"(1) for a vehicle manufacturer that fails to meet the minimum required percentage of zero-emission vehicle sales for the applicable model year, as determined under subsection (c), a quantity of zero-emission vehicle credits sufficient to offset that excess, as determined by the Administrator; or

"(2) for a vehicle manufacturer that meets or exceeds the minimum required percentage of zero-emission vehicle sales for the applicable model year, as determined under subsection (c), a certification of that compliance, as the Administrator determines to be appropriate.

"(c) MINIMUM REQUIRED ANNUAL PERCENTAGE OF ZERO-EMISSION VEHICLE CREDITS.—For model years 2026 through 2035, in annual increments, the minimum annual percentage of the base quantity of new passenger vehicles of a vehicle manufacturer delivered for sale that are equivalent to zero-emission vehicles, based on the issuance of zero-emission vehicle credits, shall be the applicable percentage specified in the following table:

"Minimum Required Annual Percentage of Zero-Emission Vehicle Credits

Model Year	Percentage
2026	35.0
2027	43.0
2028	51.0
2029	59.0
2030	68.0
2031	76.0
2032	82.0

"Minimum Required Annual Percentage of Zero-Emission Vehicle Credits—Continued

Model Year	Percentage
2033	88.0
2034	94.0
2035	100.0.

"(d) REQUIREMENT FOR 2035 AND THEREAFTER.—For model year 2035 and each model year thereafter, a vehicle manufacturer shall sell only zero-emission vehicles.

"(e) ZERO-EMISSION VEHICLE CREDITS.—

"(1) IN GENERAL.—A vehicle manufacturer may satisfy the requirements of subsection (b) through the submission of zero-emission vehicle credits—

"(A) issued to the vehicle manufacturer under subsection (f); or

"(B) obtained by purchase, transfer, or exchange under subsection (g).

"(2) LIMITATION.—A zero-emission vehicle credit may be counted toward compliance with subsection (b) only once.

"(f) ISSUANCE OF ZERO-EMISSION VEHICLE CREDITS.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Administrator shall establish by rule a program—

''(A) to verify and issue zero-emission vehicle credits to vehicle manufacturers;

''(B) to track the sale, transfer, exchange, carry over, and retirement of zero-emission vehicle credits; and

''(C) to enforce the requirements of this section.

''(2) APPLICATION.—

''(A) IN GENERAL.—A vehicle manufacturer that delivered for sale, either directly or through an affiliate, such as a dealer, a new zero-emission vehicle or a qualified electric vehicle in the United States may apply to the Administrator for the issuance of a zero-emission vehicle credit.

''(B) ELIGIBILITY.—To be eligible for the issuance of a zero-emission vehicle credit, a vehicle manufacturer shall demonstrate to the Administrator that the vehicle manufacturer delivered for sale 1 or more zero-emission vehicles or qualified electric vehicles in the previous model year.

''(C) CONTENTS.—The application shall indicate—

"(i) the type of zero-emission vehicle or qualified electric vehicle that was delivered for sale;

"(ii) the State in which the zero-emission vehicle or qualified electric vehicle was delivered for sale; and

"(iii) any other information determined to be appropriate by the Administrator.

"(D) AGGREGATION.—An application for a zero-emission vehicle credit under subparagraph (A) may aggregate information on all zero-emission vehicles and qualified electric vehicles delivered for sale by the vehicle manufacturer in the applicable model year.

"(3) QUANTITY OF ZERO-EMISSION VEHICLE CREDITS.—

"(A) ZERO-EMISSION VEHICLES.—The Administrator shall issue to a vehicle manufacturer the application under paragraph (2) of which is approved 1 zero-emission vehicle credit for each zero-emission vehicle delivered for sale in the United States.

"(B) QUALIFIED ELECTRIC VEHICLES.—For a qualified electric vehicle delivered for sale by a vehicle manufacturer the application under paragraph (2) of which is approved, the Administrator shall issue a partial zero-emission vehicle credit based on the estimated proportion of the mileage driven—

"(i) with respect to a qualified electric vehicle described in subsection (a)(3)(A), on the battery of the qualified electric vehicle, as determined by the Administrator; and

"(ii) with respect to a qualified electric vehicle described in subsection (a)(3)(B), on hydrogen that is produced through a process that results in a lifecycle greenhouse gas emissions (as defined in section 45V(c) of the Internal Revenue Code of 1986) rate of less than 0.45 kilograms of carbon dioxide-equivalent per kilogram of hydrogen, as determined by the Administrator.

"(C) CREDIT BANKING.—A zero-emission vehicle credit issued for any model year that is not submitted to comply with the minimum annual percentage of zero-emission vehicles under subsection (c) during that model year may be carried forward for use pursuant to subsection (b)(1) within the next 5 years, but not later than model year 2035.

"(g) ZERO-EMISSION VEHICLE CREDIT TRADING.—

"(1) IN GENERAL.—A zero-emission vehicle credit for any model year before 2035 that is not submitted to the Administrator to comply with the minimum annual percentage of zero-emission vehicles under subsection (c) for that model year may be sold, transferred, or exchanged by the vehicle manufacturer to which the credit is issued or by any other entity that acquires the zero-emission vehicle credit.

"(2) DELEGATION.—

"(A) IN GENERAL.—The Administrator may delegate to an appropriate market-making entity the administration of a national tradeable zero-emission vehicle credit market for purposes of creating a transparent national market for the sale or trade of zero-emission vehicle credits.

"(B) PUBLIC REPORT.—If the Administrator makes a delegation under subparagraph (A), the entity to which the Administrator made the delegation shall annually submit to Congress and make available to the public a report describing the status of the zero-emission vehicle credit market.

"(h) ZERO-EMISSION VEHICLE CREDIT RETIREMENT.—

"(1) IN GENERAL.—Any entity that obtains legal rights to a zero-emission vehicle credit may retire the zero-emission vehicle credit in any model year.

"(2) USE OF RETIRED ZERO-EMISSION VEHICLE CREDIT.—A zero-emission vehicle credit retired under paragraph (1) may not be used for compliance with subsection (b) in—

"(A) the model year in which the zero-emission vehicle credit is retired; or

"(B) any subsequent model year.

"(i) INFORMATION COLLECTION.—The Administrator may collect the information necessary to verify and audit—

"(1) the model year sales of passenger vehicles of any vehicle manufacturer;

"(2) a zero-emission vehicle credit submitted by a vehicle manufacturer pursuant to subsection (b)(1);

"(3) the validity of a zero-emission vehicle credit submitted for compliance by a vehicle manufacturer to the Administrator; and

"(4) the quantity of passenger vehicles delivered for sale in the United States of all vehicle manufacturers.

"(j) STATE PROGRAMS.—

"(1) IN GENERAL.—Nothing in this section shall preempt the authority of a State or political subdivision of a State to adopt or enforce any law (including regulations) relating to motor vehicles, including the authority to set standards for motor vehicle emissions and zero-emission vehicle requirements under section 177 and section 209.

"(2) COMPLIANCE WITH SECTION.—No law or regulation of a State or political subdivision of a State shall relieve any vehicle manufacturer from compliance with any requirement otherwise applicable under this section.

"(k) SENSE OF CONGRESS.—It is the sense of Congress that vehicle manufacturers should diversify vehicle technologies and models to ensure consumer choice and access.

"(l) REGULATIONS.—Not later than 540 days after the date of enactment of this section, the Administrator shall promulgate regulations to implement this section.

"(m) ENFORCEMENT.—

"(1) CIVIL PENALTY.—

"(A) IN GENERAL.—A vehicle manufacturer that fails to comply with subsection (b) shall be liable for a civil penalty, assessed by the Administrator, in an amount that is equal to twice the average value of the aggregate quantity of zero-emission vehicle credits that the vehicle manufacturer failed to submit in violation of that subsection, as determined by the Administrator.

"(B) ENFORCEMENT.—The Administrator shall assess any civil penalty under subparagraph (A).

"(C) DEPOSIT.—With respect to any civil penalty paid to the Administrator pursuant to subparagraph (A), the Administrator shall deposit the amount into the Highway Trust Fund established by section 9503(a) of the Internal Revenue Code of 1986.

"(2) INJUNCTION.—After model year 2035, the Administrator shall issue an injunction on the manufacture of any passenger vehicles other than zero-emission vehicles by a vehicle manufacturer.''.

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