

119TH CONGRESS
2D SESSION

S. _____

To amend the Clean Air Act to clarify standards for emissions emanating
from outside of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. LUMMIS introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To amend the Clean Air Act to clarify standards for emis-
sions emanating from outside of the United States, 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 “Foreign Emissions and
5 Nonattainment Clarification for Economic Stability Act”
6 or the “FENCES Act”.

7 **SEC. 2. EMISSIONS BEYOND CONTROL.**

8 (a) CLARIFICATION OF EMISSIONS COVERED.—Sec-
9 tion 179B of the Clean Air Act (42 U.S.C. 7509a) is
10 amended—

1 (1) by inserting “(regardless of whether such
2 emissions result from human activity)” after “but
3 for emissions emanating from outside of the United
4 States” each place it appears; and

5 (2) in subsection (d), by inserting “(regardless
6 of whether such emissions result from human activ-
7 ity)” after “but for emissions emanating from out-
8 side the United States”.

9 (b) DESIGNATIONS.—Section 179B of the Clean Air
10 Act (42 U.S.C. 7509a) is amended by adding at the end
11 the following:

12 “(e) DESIGNATIONS.—Notwithstanding any other
13 provision of law, an area within a State may not be des-
14 ignated as a nonattainment area with respect to any new
15 or revised primary or secondary national ambient air qual-
16 ity standard for a pollutant if such State establishes to
17 the satisfaction of the Administrator that such area would
18 be in attainment with such national ambient air quality
19 standard for such pollutant but for emissions emanating
20 from outside of the United States (regardless of whether
21 such emissions result from human activity).”.

22 (c) APPLICABILITY OF SANCTIONS AND FEES IF
23 EMISSIONS BEYOND CONTROL.—Subpart 1 of part D of
24 title I of the Clean Air Act is amended by inserting after
25 section 179 (42 U.S.C. 7509) the following:

1 **“SEC. 179A. APPLICABILITY OF SANCTIONS AND FEES IF**
2 **EMISSIONS BEYOND CONTROL.**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of this Act, with respect to any nonattainment area
5 that is classified under section 181 as a Severe Area or
6 an Extreme Area for ozone or under section 188 as a Seri-
7 ous Area for particulate matter, no sanction or fee under
8 section 179 or 185 shall apply with respect to a State (or
9 an area or source therein) on the basis of a deficiency de-
10 scribed in section 179(a), or the failure to attain a na-
11 tional ambient air quality standard for ozone or particu-
12 late matter by the applicable attainment date, if the State
13 demonstrates that the State would have avoided such defi-
14 ciency, or such standard would have been attained, but
15 for one or more of the following:

16 “(1) Emissions emanating from outside the
17 nonattainment area.

18 “(2) Emissions from an exceptional event (as
19 defined in section 319(b)(1)).

20 “(3) Emissions from mobile sources to the ex-
21 tent the State demonstrates that—

22 “(A) such emissions are beyond the control
23 of the State to reduce or eliminate; and

24 “(B) the State is fully implementing such
25 measures as are within the authority of the

1 State to control emissions from the mobile
2 sources.

3 “(b) NO EFFECT ON UNDERLYING STANDARDS.—
4 The inapplicability of sanctions or fees with respect to a
5 State (or an area or source therein) pursuant to sub-
6 section (a) does not affect the obligation of a State, area,
7 source, or other entity under other provisions of this Act
8 to establish and implement measures to attain a national
9 ambient air quality standard for ozone or particulate mat-
10 ter.

11 “(c) PERIODIC RENEWAL OF DEMONSTRATION.—
12 For subsection (a) to continue to apply with respect to
13 a State (or an area or source therein), the State involved
14 shall renew the demonstration required by subsection (a)
15 at least once every 5 years.”.