

108TH CONGRESS
2D SESSION

H. R. 3762

To establish the Corporate Subsidy Reform Commission to review inequitable Federal subsidies and make recommendations for termination, modification, or retention of such subsidies, and to state the sense of the Congress that the Congress should promptly consider legislation that would make the changes in law necessary to implement the recommendations.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2004

Mr. SMITH of Washington (for himself, Mr. SHAYS, Mr. CASE, Mr. TIERNEY, Mr. CARTER, Mr. DUNCAN, Mr. EMANUEL, Mr. BEAUPREZ, Mr. HEFLEY, and Mr. KIND) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the Corporate Subsidy Reform Commission to review inequitable Federal subsidies and make recommendations for termination, modification, or retention of such subsidies, and to state the sense of the Congress that the Congress should promptly consider legislation that would make the changes in law necessary to implement the recommendations.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Corporate Subsidy Re-
3 form Commission Act of 2004”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (1) Federal subsidies, including tax advantages,
7 which may have been enacted with a valid purpose
8 for specific industries or industry segments can—

9 (A) fall subject to abuse, causing unantici-
10 pated and unjustified windfalls to some indus-
11 tries and industry segments; or

12 (B) become obsolete, anticompetitive, or no
13 longer in the public interest, making such sub-
14 sidies unnecessary or undesired;

15 (2) it is unfair to force the United States tax-
16 payer to support unnecessary subsidies, including
17 tax advantages, that do not provide a substantial
18 public benefit or serve the public interest;

19 (3) the Congress has been unable to evaluate
20 methodically those Federal subsidies that are unfair
21 and unnecessary and require reform or elimination;
22 and

23 (4) a Commission to advise the Congress is es-
24 sential to a comprehensive review of such unfair cor-
25 porate subsidies and to the reform or elimination of
26 such subsidies.

1 **SEC. 3. PURPOSE.**

2 The purpose of this Act is to establish a fair and de-
3 liberative process that will result in the timely identifica-
4 tion, review, and reform or elimination of unnecessary and
5 inequitable subsidies, including tax advantages, provided
6 by the Federal Government to entities or industries en-
7 gaged in profit-making enterprises.

8 **SEC. 4. DEFINITION.**

9 For purposes of this Act, the term “inequitable Fed-
10 eral subsidy”—

11 (1) except as provided in paragraph (2), means
12 a payment, benefit, service, or tax advantage that—

13 (A) is provided by the Federal Government
14 to any corporation, partnership, joint venture,
15 association, or business trust other than—

16 (i) a nonprofit organization described
17 under section 501(c)(3) of the Internal
18 Revenue Code of 1986 that is exempt from
19 taxation under section 501(a) of the Inter-
20 nal Revenue Code of 1986; or

21 (ii) a State or local government or In-
22 dian Tribe; and

23 (B) provides an unfair competitive advan-
24 tage or financial windfall; and

25 (2) does not include a payment, benefit, service,
26 or tax advantage that is awarded for the purposes

1 of research and development in the broad public in-
2 terest on the basis of a peer reviewed or other open,
3 competitive, merit-based procedure.

4 **SEC. 5. THE COMMISSION.**

5 (a) ESTABLISHMENT.—There is established an inde-
6 pendent commission to be known as the “Corporate Sub-
7 sidy Reform Commission” (hereafter in this Act referred
8 to as the “Commission”).

9 (b) DUTIES.—The Commission shall—

10 (1) examine the programs and laws of the Fed-
11 eral Government and identify such programs and
12 laws that provide inequitable Federal subsidies;

13 (2) review inequitable Federal subsidies; and

14 (3) submit the report required under section
15 6(c) to the Congress, making recommendations re-
16 garding the termination, modification, or retention
17 of inequitable Federal subsidies.

18 (c) LIMITATIONS.—

19 (1) CREATION OF NEW PROGRAMS OR TAXES.—

20 This Act is not intended to result in the creation of
21 new programs or taxes. The Commission established
22 in this section shall limit its activities to reviewing
23 existing programs or laws with the goal of ensuring
24 fairness and equity in the operation and application
25 thereof.

1 (2) ELIMINATION OF AGENCIES AND DEPART-
2 MENTS.—The Commission—

3 (A) shall limit its recommendations to the
4 termination or reform of payments, benefits,
5 services, or tax advantages; and

6 (B) shall not recommend the termination
7 of any Federal agency or department.

8 (d) ADVISORY COMMITTEE.—The Commission shall
9 be considered an advisory committee within the meaning
10 of that term in the Federal Advisory Committee Act (5
11 U.S.C. App.).

12 (e) APPOINTMENT.—

13 (1) MEMBERS.—The members of the Commis-
14 sion—

15 (A) shall be appointed for the life of the
16 Commission; and

17 (B) shall be composed of 8 members, of
18 whom—

19 (i) 2 shall be appointed by the Speak-
20 er of the House of Representatives;

21 (ii) 2 shall be appointed by the minor-
22 ity leader of the House of Representatives;

23 (iii) 2 shall be appointed by the ma-
24 jority leader of the Senate, one of whom

1 shall be designated by the majority leader
2 to serve as a co-chair; and

3 (iv) 2 shall be appointed by the minor-
4 ity leader of the Senate, one of whom shall
5 be designated by the minority leader to
6 serve as a co-chair.

7 (2) CONSULTATION REQUIRED.—The Speaker
8 of the House of Representatives, the minority leader
9 of the House of Representatives, the majority leader
10 of the Senate, and the minority leader of the Senate
11 shall consult among themselves prior to the appoint-
12 ment of the members of the Commission in order to
13 achieve, to the maximum extent possible, fair and
14 equitable representation of various points of view
15 with respect to the matters to be studied by the
16 Commission under subsection (b).

17 (3) BACKGROUND.—The members shall rep-
18 resent a broad array of expertise covering, to the ex-
19 tent practical, all subject matter, programs, and
20 laws the Commission is likely to review.

21 (f) MEETINGS.—

22 (1) INITIAL MEETING.—No later than April 1,
23 2004, the Commission shall conduct its first meet-
24 ing.

1 (2) OPEN MEETINGS.—Each meeting of the
2 Commission shall be open to the public, except that
3 in cases in which classified information, trade se-
4 crets, or personnel matters are discussed, the co-
5 chairs may close the meeting. All proceedings, infor-
6 mation, and deliberations of the Commission shall be
7 available, upon request, to the Chairman and rank-
8 ing minority member of the relevant Committee of
9 the Congress having jurisdiction to report legislation
10 regarding the subject matter thereof.

11 (g) VACANCIES.—A vacancy on the Commission shall
12 be filled in the same manner as the original appointment.

13 (h) PAY AND TRAVEL EXPENSES.—

14 (1) PAY.—Notwithstanding section 7 of the
15 Federal Advisory Committee Act (5 App. U.S.C.),
16 each member of the Commission, other than the co-
17 chairs, shall be paid at a rate equal to the daily
18 equivalent of the minimum annual rate of basic pay
19 for level IV of the Executive Schedule under section
20 5315 of title 5, United States Code, for each day
21 (including travel time) during which the member is
22 engaged in the actual performance of duties vested
23 in the Commission.

24 (2) CHAIRMEN.—Notwithstanding section 7 of
25 the Federal Advisory Committee Act (5 App.

1 U.S.C.), the co-chairs shall be paid for each day re-
2 ferred to in paragraph (1) at a rate equal to the
3 daily payment of the minimum annual rate of basic
4 pay payable for level III of the Executive Schedule
5 under section 5314 of title 5, United States Code.

6 (3) TRAVEL EXPENSES.—Members of the Com-
7 mission shall receive travel expenses, including per
8 diem in lieu of subsistence, in accordance with sec-
9 tion 5702 and 5703 of title 5, United States Code.

10 (i) DIRECTOR OF STAFF.—

11 (1) QUALIFICATIONS.—The co-chairs shall ap-
12 point as Director an individual who has not, during
13 the 12 months preceding the date of such appoint-
14 ment, served in any of the entities or industries that
15 the Commission intends to review.

16 (2) PAY.—Notwithstanding section 7 of the
17 Federal Advisory Committee Act (5 App. U.S.C.),
18 the Director shall be paid at the rate of basic pay
19 payable for level IV of the Executive Schedule under
20 section 5315 of title 5, United States Code.

21 (3) REPORTS.—The Director shall submit peri-
22 odic reports on administrative and personnel matters
23 to the co-chairs of the Commission and the Chair-
24 man and ranking minority member of the Committee
25 on Governmental Affairs of the Senate and the Com-

1 mittee on Government Reform of the House of Rep-
2 resentatives.

3 (j) STAFF.—

4 (1) ADDITIONAL PERSONNEL.—Subject to para-
5 graphs (2) and (4), the Director, with the approval
6 of the Commission, may appoint and fix the pay of
7 additional personnel.

8 (2) APPOINTMENTS.—The Director may make
9 such appointments without regard to the provisions
10 of title 5, United States Code, governing appoint-
11 ments in the competitive service, and any personnel
12 so appointed may be paid without regard to the pro-
13 visions of chapter 51 and subchapter III of chapter
14 53 of that title relating to classification and General
15 Schedule pay rates.

16 (3) LEGAL STAFF.—The Director shall appoint
17 under paragraph (2) such professional legal staff as
18 are necessary for the performance of the functions
19 of the Commission.

20 (4) DETAILEES.—Upon the request of the Di-
21 rector, the head of any Federal department or agen-
22 cy may detail any of the personnel of that depart-
23 ment or agency to the Commission to assist the
24 Commission in accordance with an agreement en-
25 tered into with the Commission.

1 (5) RESTRICTIONS ON PERSONNEL AND
2 DETAILEES.—The following restrictions shall apply
3 to personnel and detailees of the Commission:

4 (A) PERSONNEL.—No more than one-third
5 of the personnel detailed to the Commission
6 may be on detail from Federal agencies that
7 deal directly or indirectly with the Federal sub-
8 sidies the Commission intends to review.

9 (B) ANALYSTS.—No more than one-fifth of
10 the professional analysts of the Commission
11 may be persons detailed from a Federal agency
12 that deals directly or indirectly with the Federal
13 subsidies the Commission intends to review.

14 (C) LEAD ANALYST.—No person detailed
15 from a Federal agency to the Commission may
16 be assigned as the lead professional analyst
17 with respect to an entity or industry the Com-
18 mission intends to review if the person has been
19 involved in regulatory or policy-making deci-
20 sions affecting any such entity or industry in
21 the 12 months preceding such assignment.

22 (D) DETAILEE.—A person may not be de-
23 tailed from a Federal agency to the Commission
24 if, within 12 months before the detail is to
25 begin, that person participated personally and

1 substantially in any matter within that par-
2 ticular agency concerning the preparation of
3 recommendations under this Act.

4 (E) FEDERAL OFFICER OR EMPLOYEE.—

5 No officer or employee of a Federal agency
6 may—

7 (i) prepare any report concerning the
8 effectiveness, fitness, or efficiency of the
9 performance on the staff of the Commis-
10 sion of any person detailed from a Federal
11 agency to that staff;

12 (ii) review the preparation of such re-
13 port; or

14 (iii) approve or disapprove such a re-
15 port.

16 (F) LIMITATION ON STAFF SIZE.—(i) Sub-
17 ject to clause (ii), there may not be more than
18 25 persons (including any detailees) on the
19 staff at any time.

20 (ii) The Commission may increase the
21 member of its personnel in excess of the limita-
22 tion under clause (i), 15 days after submitting
23 notification of such increase to the Committee
24 on Governmental Affairs of the Senate and the

1 Committee on Government Reform of the
2 House of Representatives.

3 (G) LIMITATION ON FEDERAL OFFICER.—

4 No member of a Federal agency and no em-
5 ployee of a Federal agency may serve as a
6 member of the Commission or as a paid mem-
7 ber of its staff.

8 (6) ASSISTANCE.—

9 (A) IN GENERAL.—The Comptroller Gen-
10 eral of the United States may provide assist-
11 ance, including the detailing of employees, to
12 the Commission in accordance with an agree-
13 ment entered into with the Commission.

14 (B) CONSULTATION.—The Commission
15 and the Comptroller General of the United
16 States shall consult with the Committee on
17 Governmental Affairs of the Senate and the
18 Committee on Government Reform of the
19 House of Representatives on the agreement re-
20 ferred to under subparagraph (A) before enter-
21 ing into such agreement.

22 (k) OTHER AUTHORITY.—

23 (1) EXPERTS AND CONSULTANTS.—The Com-
24 mission may procure by contract, to the extent funds
25 are available, the temporary or intermittent services

1 of experts or consultants pursuant to section 3109
2 of title 5, United States Code.

3 (2) LEASING.—The Commission may lease
4 space and acquire personal property to the extent
5 that funds are available.

6 (l) FUNDING.—There is authorized to be appro-
7 priated to the Commission \$4,000,000 to carry out its du-
8 ties under this Act.

9 (m) TERMINATION.—The Commission shall termi-
10 nate on January 1, 2006.

11 **SEC. 6. PROCEDURE FOR MAKING RECOMMENDATIONS TO**
12 **TERMINATE CORPORATE SUBSIDIES.**

13 (a) AGENCY PLAN.—

14 (1) IN GENERAL.—The head of each Federal
15 department or agency shall include in the documents
16 submitted in support of the budget of the agency for
17 fiscal year 2005 a list identifying all programs and
18 laws administered by that department or agency
19 that the head of the department or agency deter-
20 mines provide inequitable Federal subsidies.

21 (2) CONTENTS.—Such list shall include—

22 (A) a detailed description of each program
23 or law in question;

24 (B) a statement identifying and detailing
25 the extent to which each payment, benefit, serv-

1 ice, or tax advantage under such program or
2 law is an inequitable Federal subsidy;

3 (C) a statement summarizing the legisla-
4 tive history and purpose of such payment, ben-
5 efit, service, or tax advantage, and the laws or
6 policies directly or indirectly giving rise to the
7 need for such programs or law; and

8 (D) a recommendation to the Commission
9 regarding the termination, modification, or re-
10 tention of each inequitable Federal subsidy
11 identified in the list.

12 (b) REVIEW BY THE COMMISSION.—

13 (1) IN GENERAL.—At any time after the sub-
14 mission of the budget documents to the Congress,
15 the Commission shall conduct public hearings on the
16 termination, modification, or retention of inequitable
17 Federal subsidies, including the recommendations in-
18 cluded in the lists required under subsection (a).

19 (2) TESTIMONY UNDER OATH.—All testimony
20 before the Commission at a public hearing conducted
21 under this paragraph shall be presented under oath.

22 (c) REPORT AND RECOMMENDATIONS OF COMMIS-
23 SION.—

24 (1) REPORT TO CONGRESS.—

1 (A) REQUIREMENT.—No later than March
2 31, 2005, the Commission shall submit a report
3 to the Congress containing the Commission’s
4 findings and recommendations for termination,
5 modification, or retention of each of the inequi-
6 table Federal subsidies reviewed by the Com-
7 mission.

8 (B) CONTENTS.—Such findings and rec-
9 ommendations shall specify—

10 (i) all actions, circumstances, and con-
11 siderations relating to or bearing upon the
12 recommendations; and

13 (ii) to the maximum extent prac-
14 ticable, the estimated effect of the rec-
15 ommendations upon the policies, laws, and
16 programs directly or indirectly affected by
17 the recommendations.

18 (C) SUPERMAJORITY REQUIREMENT.—The
19 Commission may not include a recommendation
20 in the report unless inclusion of the rec-
21 ommendation is approved by at least 6 mem-
22 bers of the Commission.

23 (2) INFORMATION AND JUSTIFICATIONS.—The
24 Commission shall include in its report information
25 specifying—

1 (A) the reasons and justifications for the
2 recommendations of the Commission;

3 (B) to the maximum extent practicable,
4 the estimated fiscal, economic, and budgetary
5 impact of accepting its recommendations;

6 (C) the amount of the projected savings re-
7 sulting from each of its recommendations;

8 (D) all actions, circumstances, and consid-
9 erations relating to or bearing upon the rec-
10 ommendations and to the maximum extent
11 practicable, the estimated effect of the rec-
12 ommendations upon the policies, laws and pro-
13 grams directly or indirectly affected by the rec-
14 ommendations; and

15 (E) the specific changes in Federal stat-
16 utes necessary to implement the recommenda-
17 tions, including citation of the relevant provi-
18 sions of existing law.

19 (3) SUBMISSION TO CONGRESS.—The report
20 submitted to the Congress under this subsection
21 shall be submitted to the Senate and the House of
22 Representatives on the same day, and shall be deliv-
23 ered to the Secretary of the Senate if the Senate is
24 not in session, and to the Clerk of the House of the
25 Representatives if the House is not in session.

1 (4) FEDERAL REGISTER.—The report sub-
2 mitted under this subsection shall be printed in the
3 first issue of the Federal Register after such submis-
4 sion.

5 (5) CHANGES IN AGENCY OR DEPARTMENT
6 RECOMMENDATIONS.—

7 (A) IN GENERAL.—Subject to the deadline
8 in paragraph (1) and to subparagraphs (B) and
9 (C) of this paragraph, in making its rec-
10 ommendations, the Commission may make
11 changes in any of the recommendations made
12 by a department or agency if the Commission
13 determines that such department or agency, in
14 treating any matter as an inequitable Federal
15 subsidy, deviated substantially from the provi-
16 sions of section 4.

17 (B) LIMITATION.—The Commission may
18 make a change in the recommendations made
19 by a department or agency, only if the Commis-
20 sion—

21 (i) makes the determination required
22 under subparagraph (B); and

23 (ii) conducts a public hearing on the
24 Commission's proposed changes.

1 (C) APPLICATION OF LIMITATION.—Sub-
2 paragraph (B) shall apply only to a change by
3 the Commission in a department or agency rec-
4 ommendation that would—

5 (i) add or delete a payment, benefit,
6 service, or tax advantage to or from, re-
7 spectively, the list recommended for termi-
8 nation;

9 (ii) add or delete a payment, benefit,
10 service, or tax advantage to or from, re-
11 spectively, the list recommended for modi-
12 fication; or

13 (iii) increase or decrease the extent of
14 a recommendation to modify a payment,
15 benefit, service, or tax advantage included
16 in a department's or agency's rec-
17 ommendation.

18 (D) JUSTIFICATION.—The Commission
19 shall explain and justify in the report submitted
20 to the Congress under this subsection any rec-
21 ommendation made by the Commission that is
22 different from a recommendation made by an
23 agency under subsection (a).

24 (6) PROVISION OF INFORMATION TO MEMBERS
25 OF CONGRESS.—After March 31, 2005, the Commis-

1 sion shall, upon request, promptly provide to any
2 Member of Congress the information used by the
3 Commission in making its recommendations.

4 (7) COMPTROLLER GENERAL.—The Comp-
5 troller General of the United States shall—

6 (A) assist the Commission, to the extent
7 requested, in the Commission’s review and anal-
8 ysis of the lists, statements, and recommenda-
9 tions made by departments and agencies under
10 subsection (a); and

11 (B) no later than 60 days after April 1,
12 2004, or the public release of the President’s
13 budget documents in 2004, whichever is earlier,
14 submit to the Congress and to the Commission
15 a report containing a detailed analysis of the
16 list, statements, and recommendations of each
17 department or agency.

18 **SEC. 7. CONGRESSIONAL ACTION ON COMMISSION REC-**
19 **COMMENDATIONS.**

20 It is the sense of the Congress that, following submis-
21 sion of the report of the Corporate Subsidy Reform Com-
22 mission under section 6, the House of Representatives and
23 the Senate should promptly consider legislation that would

- 1 enact changes in Federal statutes necessary to implement
- 2 the recommendations of the Commission.

