

109TH CONGRESS
1ST SESSION

S. 269

To provide emergency relief to small business concerns affected by a significant increase in the price of heating oil, natural gas, propane, or kerosene, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2005

Mr. KERRY (for himself, Mr. REED, Mr. DODD, Mr. BINGAMAN, Mr. KOHL, Mr. JEFFORDS, Ms. CANTWELL, Mr. JOHNSON, Mr. PRYOR, Mr. LEAHY, Mr. LEVIN, Mr. SCHUMER, Mr. LIEBERMAN, Mrs. CLINTON, Mr. HARKIN, Mr. KENNEDY, Mr. BAYH, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To provide emergency relief to small business concerns affected by a significant increase in the price of heating oil, natural gas, propane, or kerosene, 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 “Small Business and
5 Farm Energy Emergency Relief Act of 2005”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) a significant number of small businesses in
4 the United States, non-farm as well as agricultural
5 producers, use heating oil, natural gas, propane, or
6 kerosene to heat their facilities and for other pur-
7 poses;

8 (2) a significant number of small business con-
9 cerns in the United States sell, distribute, market,
10 or otherwise engage in commerce directly related to
11 heating oil, natural gas, propane, and kerosene; and

12 (3) significant increases in the price of heating
13 oil, natural gas, propane, or kerosene—

14 (A) disproportionately harm small busi-
15 nesses dependent on those fuels or that use,
16 sell, or distribute those fuels in the ordinary
17 course of their business, and can cause them
18 substantial economic injury;

19 (B) can negatively affect the national econ-
20 omy and regional economies;

21 (C) have occurred in the winters of 1983–
22 1984, 1988–1989, 1996–1997, 1999–2000,
23 2000–2001, and 2004–2005; and

24 (D) can be caused by a host of factors, in-
25 cluding international conflicts, global or re-
26 gional supply difficulties, weather conditions,

insufficient inventories, refinery capacity, transportation, and competitive structures in the markets, causes that are often unforeseeable to, and beyond the control of, those who own and operate small businesses.

**SEC. 3. SMALL BUSINESS ENERGY EMERGENCY DISASTER
LOAN PROGRAM.**

(a) IN GENERAL.—Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by inserting after paragraph (3) the following:

“(4)(A) In this paragraph—

“(i) the term ‘base price index’ means the moving average of the closing unit price on the New York Mercantile Exchange for heating oil, natural gas, or propane for the 10 days, in each of the most recent 2 preceding years, which correspond to the trading days described in clause (ii);

“(ii) the term ‘current price index’ means the moving average of the closing unit price on the New York Mercantile Exchange, for the 10 most recent trading days, for contracts to purchase heating oil, natural gas, or propane during the subsequent calendar month, commonly known as the ‘front month’;

1 “(iii) the term ‘heating fuel’ means heating
2 oil, natural gas, propane, or kerosene; and

3 “(iv) the term ‘significant increase’
4 means—

5 “(I) with respect to the price of heat-
6 ing oil, natural gas, or propane, any time
7 the current price index exceeds the base
8 price index by not less than 40 percent;
9 and

10 “(II) with respect to the price of ker-
11 osene, any increase which the Adminis-
12 trator, in consultation with the Secretary
13 of Energy, determines to be significant.

14 “(B) The Administration may make such loans,
15 either directly or in cooperation with banks or other
16 lending institutions through agreements to partici-
17 pate on an immediate or deferred basis, to assist a
18 small business concern that has suffered or that is
19 likely to suffer substantial economic injury as the re-
20 sult of a significant increase in the price of heating
21 fuel.

22 “(C) Any loan or guarantee extended pursuant
23 to this paragraph shall be made at the same interest
24 rate as economic injury loans under paragraph (2).

1 “(D) No loan may be made under this para-
2 graph, either directly or in cooperation with banks
3 or other lending institutions through agreements to
4 participate on an immediate or deferred basis, if the
5 total amount outstanding and committed to the bor-
6 rower under this subsection would exceed
7 \$1,500,000, unless such borrower constitutes a
8 major source of employment in its surrounding area,
9 as determined by the Administration, in which case
10 the Administration, in its discretion, may waive the
11 \$1,500,000 limitation.

12 “(E) For purposes of assistance under this
13 paragraph—

14 “(i) a declaration of a disaster area based
15 on conditions specified in this paragraph shall
16 be required, and shall be made by the President
17 or the Administrator; or

18 “(ii) if no declaration has been made pur-
19 suant to clause (i), the Governor of a State in
20 which a significant increase in the price of heat-
21 ing fuel has occurred may certify to the Admin-
22 istration that small business concerns have suf-
23 fered economic injury as a result of such in-
24 crease and are in need of financial assistance
25 which is not otherwise available on reasonable

terms in that State, and upon receipt of such certification, the Administration may make such loans as would have been available under this paragraph if a disaster declaration had been issued.

“(F) Notwithstanding any other provision of law, loans made under this paragraph may be used by a small business concern described in subparagraph (B) to convert from the use of heating fuel to a renewable or alternative energy source, including agriculture and urban waste, geothermal energy, cogeneration, solar energy, wind energy, or fuel cells.”.

(b) CONFORMING AMENDMENTS RELATING TO HEATING FUEL.—Section 3(k) of the Small Business Act (15 U.S.C. 632(k)) is amended—

(1) by inserting “, significant increase in the price of heating fuel” after “civil disorders”; and

(2) by inserting “other” before “economic”.

SEC. 4. AGRICULTURAL PRODUCER EMERGENCY LOANS.

(a) IN GENERAL.—Section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)) is amended—

(1) in the first sentence—

(A) by striking “operations have” and inserting “operations (i) have”; and

1 (B) by inserting before “: *Provided*,” the
 2 following: “, or (ii)(I) are owned or operated by
 3 such an applicant that is also a small business
 4 concern (as defined in section 3 of the Small
 5 Business Act (15 U.S.C. 632)), and (II) have
 6 suffered or are likely to suffer substantial eco-
 7 nomic injury on or after October 1, 2004, as
 8 the result of a significant increase in energy
 9 costs or input costs from energy sources occur-
 10 ring on or after October 1, 2004, in connection
 11 with an energy emergency declared by the
 12 President or the Secretary”;

13 (2) in the third sentence, by inserting before
 14 the period at the end the following: “or by an energy
 15 emergency declared by the President or the Sec-
 16 retary”; and

17 (3) in the fourth sentence—

18 (A) by inserting “or energy emergency”
 19 after “natural disaster” each place that term
 20 appears; and

21 (B) by inserting “or declaration” after
 22 “emergency designation”.

23 (b) FUNDING.—Funds available on the date of enact-
 24 ment of this Act for emergency loans under subtitle C of
 25 the Consolidated Farm and Rural Development Act (7

1 U.S.C. 1961 et seq.) shall be available to carry out the
 2 amendments made by subsection (a) to meet the needs re-
 3 sulting from natural disasters.

4 **SEC. 5. GUIDELINES AND RULEMAKING.**

5 (a) GUIDELINES.—Not later than 30 days after the
 6 date of enactment of this Act, the Administrator of the
 7 Small Business Administration and the Secretary of Agri-
 8 culture shall each issue such guidelines as the Adminis-
 9 trator or the Secretary, as applicable, determines to be
 10 necessary to carry out this Act and the amendments made
 11 by this Act.

12 (b) RULEMAKING.—Not later than 30 days after the
 13 date of enactment of this Act, the Administrator of the
 14 Small Business Administration, after consultation with
 15 the Secretary of Energy, shall promulgate regulations
 16 specifying the method for determining a significant in-
 17 crease in the price of kerosene under section
 18 7(b)(4)(A)(iv)(II) of the Small Business Act (15 U.S.C.
 19 636(b)(4)(A)(iv)(II)).

20 **SEC. 6. REPORTS.**

21 (a) SMALL BUSINESS ADMINISTRATION.—Not later
 22 than 12 months after the date on which the Administrator
 23 of the Small Business Administration issues guidelines
 24 under section 5, and annually thereafter, the Adminis-
 25 trator shall submit to the Committee on Small Business

1 and Entrepreneurship of the Senate and the Committee
2 on Small Business of the House of Representatives, a re-
3 port on the effectiveness of the assistance made available
4 under section 7(b)(4) of the Small Business Act, as added
5 by this Act, including—

6 (1) the number of small business concerns that
7 applied for a loan under such section and the num-
8 ber of those that received such loans;

9 (2) the dollar value of those loans;

10 (3) the States in which the small business con-
11 cerns that received such loans are located;

12 (4) the type of heating fuel or energy that
13 caused the significant increase in the cost for the
14 participating small business concerns; and

15 (5) recommendations for ways to improve the
16 assistance provided under such section 7(b)(4), if
17 any.

18 (b) DEPARTMENT OF AGRICULTURE.—Not later than
19 12 months after the date on which the Secretary of Agri-
20 culture issues guidelines under section 5, and annually
21 thereafter, the Secretary shall submit to the Committee
22 on Small Business and Agriculture, Nutrition, and For-
23 estry of the Senate and the Committee on Small Business
24 and Agriculture of the House of Representatives, a report
25 that—

1 (1) describes the effectiveness of the assistance
 2 made available under section 7(b)(4) of the Small
 3 Business Act (15 U.S.C. 636(b)(4)); and

4 (2) contains recommendations for ways to im-
 5 prove the assistance provided under such section
 6 7(b)(4), if any.

7 **SEC. 7. EFFECTIVE DATE.**

8 (a) SMALL BUSINESS.—The amendments made by
 9 this Act shall apply during the 4-year period beginning
 10 on the date on which guidelines are published by the Ad-
 11 ministrator of the Small Business Administration under
 12 section 5, with respect to assistance under section 7(b)(4)
 13 of the Small Business Act, as added by this Act, to eco-
 14 nomic injury suffered or likely to be suffered as the result
 15 of a significant increase in the price of heating fuel occur-
 16 ring on or after October 1, 2004; or

17 (b) AGRICULTURE.—The amendments made by sec-
 18 tion 4 shall apply during the 4-year period beginning on
 19 the date on which guidelines are published by the Sec-
 20 retary of Agriculture under section 5.

