

110TH CONGRESS
2D SESSION

S. 3223

To establish a small business energy emergency disaster loan program.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2008

Mr. KERRY (for himself, Ms. SNOWE, Mr. KENNEDY, Mr. SCHUMER, Ms. STABENOW, Mr. DURBIN, Ms. LANDRIEU, Ms. COLLINS, Mrs. CLINTON, Mr. HARKIN, Mr. DODD, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To establish a small business energy emergency disaster loan program.

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 Energy
5 Emergency Relief Act of 2008”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the terms “Administration” and “Adminis-
2 trator” mean the Small Business Administration
3 and the Administrator thereof, respectively; and

4 (2) the term “small business concern” has the
5 same meaning as in section 3 of the Small Business
6 Act (15 U.S.C. 632).

7 **SEC. 3. FINDINGS.**

8 Congress finds that—

9 (1) a significant number of small business con-
10 cerns in the United States, nonfarm as well as agri-
11 cultural producers, use heating oil, natural gas, pro-
12 pane, or kerosene to heat their facilities and for
13 other purposes;

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

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

20 (A) disproportionately harm small business
21 concerns dependent on those fuels or that use,
22 sell, or distribute those fuels in the ordinary
23 course of their business, and can cause them
24 substantial economic injury;

1 (B) can negatively affect the national econ-
 2 omy and regional economies;

3 (C) have occurred in the winters of 1983
 4 to 1984, 1988 to 1989, 1996 to 1997, 1999 to
 5 2000, 2000 to 2001, 2004 to 2005, 2006 to
 6 2007, and 2007 to 2008; and

7 (D) can be caused by a host of factors, in-
 8 cluding international conflicts, global or re-
 9 gional supply difficulties, weather conditions,
 10 insufficient inventories, refinery capacity, trans-
 11 portation, and competitive structures in the
 12 markets, causes that are often unforeseeable to,
 13 and beyond the control of, those who own and
 14 operate small business concerns.

15 **SEC. 4. SMALL BUSINESS ENERGY EMERGENCY DISASTER**
 16 **LOAN PROGRAM.**

17 (a) IN GENERAL.—Section 7(b) of the Small Busi-
 18 ness Act (15 U.S.C. 636(b)) is amended by inserting im-
 19 mediately after paragraph (9) the following:

20 “(10) ENERGY EMERGENCIES.—

21 “(A) DEFINITIONS.—In this paragraph—

22 “(i) the term ‘base price index’ means
 23 the moving average of the closing unit
 24 price on the New York Mercantile Ex-
 25 change for heating oil, natural gas, or pro-

pane 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’;

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

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

“(I) with respect to the price of heating oil, natural gas, or propane, any time the current price index exceeds the base price index by not less than 50 percent; and

“(II) with respect to the price of kerosene, any increase which the Administrator, in consultation with the

1 Secretary of Energy, determines to be
2 significant.

3 “(B) AUTHORIZATION.—The Administra-
4 tion may make such loans, either directly or in
5 cooperation with banks or other lending institu-
6 tions through agreements to participate on an
7 immediate or deferred basis, to assist a small
8 business concern that has suffered or that is
9 likely to suffer substantial economic injury as
10 the result of a significant increase in the price
11 of heating fuel occurring on or after October 1,
12 2007.

13 “(C) INTEREST RATE.—Any loan or guar-
14 antee extended under this paragraph shall be
15 made at the same interest rate as economic in-
16 jury loans under paragraph (2).

17 “(D) MAXIMUM AMOUNT.—No loan may
18 be made under this paragraph, either directly
19 or in cooperation with banks or other lending
20 institutions through agreements to participate
21 on an immediate or deferred basis, if the total
22 amount outstanding and committed to the bor-
23 rower under this subsection would exceed
24 \$1,500,000, unless such borrower constitutes a
25 major source of employment in its surrounding

1 area, as determined by the Administrator, in
2 which case the Administrator, in the discretion
3 of the Administrator, may waive the \$1,500,000
4 limitation.

5 “(E) DECLARATIONS.—For purposes of
6 assistance under this paragraph—

7 “(i) a declaration of a disaster area
8 based on conditions specified in this para-
9 graph shall be required, and shall be made
10 by the President or the Administrator; and

11 “(ii) if no declaration has been made
12 under clause (i), the Governor of a State
13 in which a significant increase in the price
14 of heating fuel has occurred may certify to
15 the Administration that small business
16 concerns have suffered economic injury as
17 a result of such increase and are in need
18 of financial assistance which is not other-
19 wise available on reasonable terms in that
20 State, and upon receipt of such certifi-
21 cation, the Administration may make such
22 loans as would have been available under
23 this paragraph if a disaster declaration
24 had been issued.

1 “(F) USE OF FUNDS.—Notwithstanding
 2 any other provision of law, loans made under
 3 this paragraph may be used by a small business
 4 concern described in subparagraph (B) to con-
 5 vert from the use of heating fuel to a renewable
 6 or alternative energy source, including agri-
 7 culture and urban waste, geothermal energy, co-
 8 generation, solar energy, wind energy, or fuel
 9 cells.”.

10 (b) CONFORMING AMENDMENTS RELATING TO
 11 HEATING FUEL.—Section 3(k) of the Small Business Act
 12 (15 U.S.C. 632(k)) is amended—

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

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

16 (c) EFFECTIVE PERIOD.—The amendments made by
 17 this section shall apply during the 4-year period beginning
 18 on the date on which guidelines are published by the Ad-
 19 ministrator under section 6.

20 **SEC. 5. AGRICULTURAL PRODUCER EMERGENCY LOANS.**

21 (a) IN GENERAL.—Section 321(a) of the Consoli-
 22 dated Farm and Rural Development Act (7 U.S.C.
 23 1961(a)) is amended—

24 (1) in the first sentence—

1 (A) by striking “operations have” and in-
2 serting “operations (i) have”; and

3 (B) by inserting before “: *Provided*,” the
4 following: “, or (ii)(I) are owned or operated by
5 such an applicant that is also a small business
6 concern (as defined in section 3 of the Small
7 Business Act (15 U.S.C. 632)), and (II) have
8 suffered or are likely to suffer substantial eco-
9 nomic injury on or after October 1, 2007, as
10 the result of a significant increase in energy
11 costs or input costs from energy sources occur-
12 ring on or after October 1, 2007, in connection
13 with an energy emergency declared by the
14 President or the Secretary”;

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

19 (3) in the fourth sentence—

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

23 (B) by inserting “or declaration” after
24 “emergency designation”.

1 (b) FUNDING.—Funds available on the date of enact-
2 ment of this Act for emergency loans under subtitle C of
3 the Consolidated Farm and Rural Development Act (7
4 U.S.C. 1961 et seq.) shall be available to carry out the
5 amendments made by subsection (a) to meet the needs re-
6 sulting from energy emergencies.

7 (c) EFFECTIVE PERIOD.—The amendments made by
8 this section shall apply during the 4-year period beginning
9 on the date on which guidelines are published by the Sec-
10 retary of Agriculture under section 6.

11 **SEC. 6. GUIDELINES AND RULEMAKING.**

12 (a) GUIDELINES.—Not later than 30 days after the
13 date of enactment of this Act, the Administrator and the
14 Secretary of Agriculture shall each issue such guidelines
15 as the Administrator or the Secretary, as applicable, de-
16 termines to be necessary to carry out this Act and the
17 amendments made by this Act.

18 (b) RULEMAKING.—Not later than 30 days after the
19 date of enactment of this Act, the Administrator, after
20 consultation with the Secretary of Energy, shall promul-
21 gate regulations specifying the method for determining a
22 significant increase in the price of kerosene under section
23 7(b)(10)(A)(iv)(II) of the Small Business Act, as added
24 by this Act.

1 **SEC. 7. REPORTS.**

2 (a) SMALL BUSINESS ADMINISTRATION.—Not later
3 than 12 months after the date on which the Administrator
4 issues guidelines under section 6, and annually thereafter
5 until the date that is 12 months after the end of the effective period of section 7(b)(10) of the Small Business Act,
6 as added by this Act, the Administrator shall submit to
7 the Committee on Small Business and Entrepreneurship
8 of the Senate and the Committee on Small Business of
9 the House of Representatives, a report on the effectiveness
10 of the assistance made available under section 7(b)(10)
11 of the Small Business Act, as added by this Act, including—
12 ing—

14 (1) the number of small business concerns that
15 applied for a loan under such section and the number
16 of those that received such loans;

17 (2) the dollar value of those loans;

18 (3) the States in which the small business concerns that received such loans are located;

20 (4) the type of heating fuel or energy that
21 caused the significant increase in the cost for the
22 participating small business concerns; and

23 (5) recommendations for ways to improve the
24 assistance provided under such section 7(b)(10), if
25 any.

1 (b) DEPARTMENT OF AGRICULTURE.—Not later than
2 12 months after the date on which the Secretary of Agri-
3 culture issues guidelines under section 6, and annually
4 thereafter until the date that is 12 months after the end
5 of the effective period of the amendments made to section
6 321(a) of the Consolidated Farm and Rural Development
7 Act (7 U.S.C. 1961(a)) by this Act, the Secretary shall
8 submit to the Committee on Small Business and Entrepre-
9 neurship and the Committee on Agriculture, Nutrition,
10 and Forestry of the Senate and the Committee on Small
11 Business and the Committee on Agriculture of the House
12 of Representatives, a report that—

13 (1) describes the effectiveness of the assistance
14 made available under section 321(a) of the Consoli-
15 dated Farm and Rural Development Act (7 U.S.C.
16 1961(a)); and

17 (2) contains recommendations for ways to im-
18 prove the assistance provided under such section
19 321(a), if any.

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