

111TH CONGRESS
2D SESSION

S. 3918

To authorize United States participation in, and appropriations for, the United States contribution to the ninth replenishment of the resources of the Asian Development Fund and the United States subscription to the fifth general capital increase of the Asian Development Bank.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. KERRY (for himself and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To authorize United States participation in, and appropriations for, the United States contribution to the ninth replenishment of the resources of the Asian Development Fund and the United States subscription to the fifth general capital increase of the Asian Development Bank.

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. ASIAN DEVELOPMENT FUND.**

4 The Asian Development Bank Act (22 U.S.C. 285 et
5 seq.) is amended by adding at the end the following:

1 **“SEC. 33. NINTH REPLENISHMENT.**

2 “(a) CONTRIBUTION AUTHORIZED.—The United
3 States Governor of the Bank is authorized to contribute
4 \$461,000,000 on behalf of the United States to the ninth
5 replenishment of the resources of the Fund, to the extent
6 such amounts are made available in advance through ap-
7 propriations Acts.

8 “(b) AUTHORIZATION OF APPROPRIATIONS.—In
9 order to pay for the United States contribution under sub-
10 section (a), there are authorized to be appropriated, with-
11 out fiscal year limitation, \$461,000,000 for payment by
12 the Secretary of the Treasury.

13 **“SEC. 34. FIFTH CAPITAL INCREASE.**

14 “(a) SUBSCRIPTION AUTHORIZED.—(1) The United
15 States Governor of the Bank may subscribe on behalf of
16 the United States to 1,104,420 additional shares of the
17 capital stock of the Bank.

18 “(2) Any subscription by the United States to the
19 capital stock of the Bank shall be effective only to such
20 extent and in such amounts as are made available in ad-
21 vance through appropriations Acts.

22 “(b) LIMITATIONS ON AUTHORIZATION OF APPRO-
23 PRIATIONS.—(1) In order to pay for the increase in the
24 United States subscription to the Bank under subsection
25 (a), there are authorized to be appropriated, without fiscal

1 year limitation, \$13,323,173,083 for payment by the Sec-
 2 retary of the Treasury.

3 “(2) Of the amount authorized to be appropriated
 4 under paragraph (1)—

5 “(A) \$532,929,240 shall be for paid in shares
 6 of the Bank; and

7 “(B) \$12,790,243,843 shall be for callable
 8 shares of the Bank.”.

9 **SEC. 2. REPORT ON REFORMS.**

10 (a) FINDINGS.—Congress makes the following find-
 11 ings:

12 (1) At the Group of Twenty (G–20) Summit,
 13 which took place in Pittsburgh in September 2009,
 14 G–20 leaders agreed that additional capital re-
 15 sources for the multilateral development banks must
 16 be joined to key institutional reforms to ensure ef-
 17 fectiveness.

18 (2) The Asian Development Bank agreed to un-
 19 dertake institutional reforms as part of its nego-
 20 tiated agreement with shareholders in order to re-
 21 ceive an increase in capital resources in the Fifth
 22 General Capital Increase (referred to in this section
 23 as the “GCIV”).

24 (b) REPORTING REQUIREMENT.—

1 (1) INITIAL REPORT.—Not later than 180 days
 2 after the date of the enactment of this Act, the Sec-
 3 retary of the Treasury shall submit a report to the
 4 Committee on Foreign Relations of the Senate, the
 5 Committee on Appropriations of the Senate, the
 6 Committee on Financial Services of the House of
 7 Representatives, and the Committee on Appropria-
 8 tions of the House of Representatives describing the
 9 extent to which the Asian Development Bank suc-
 10 cessfully implemented—

11 (A) the Pittsburgh G–20 reforms agreed to
 12 for future capital increases at the multilateral
 13 development banks, as referred to in the Pitts-
 14 burgh Communiqué; and

15 (B) the reforms agreed to in the context of
 16 the GCIV, as referred to in the report of the
 17 Board of Directors entitled “Review of Asian
 18 Development Bank’s Resource Position and
 19 Proposal for a Fifth General Capital Increase”
 20 and endorsed by Governors under Resolution
 21 No. 336, consistent with the principles reflected
 22 in the Leaders’ Statement issued at the Pitts-
 23 burgh G–20 summit in September 2009.

24 (2) SECOND REPORT.—Not later than 18
 25 months after the date of the enactment of this Act,

1 the Secretary of the Treasury shall submit an up-
2 date of the report submitted under paragraph (1) to
3 the congressional committees set forth in paragraph
4 (1).

5 **SEC. 3. ENHANCING THE ENVIRONMENTAL AND SOCIAL EF-**
6 **ECTIVENESS OF ASSISTANCE PROGRAMS IN**
7 **THE MEKONG RIVER BASIN.**

8 (a) FINDINGS.—Congress makes the following find-
9 ings:

10 (1) The Mekong River Basin—

11 (A) is home to the world's largest inland
12 fishery;

13 (B) is one of the most productive regions
14 of wet rice cultivation;

15 (C) serves as a main and, in the near
16 term, irreplaceable source of animal protein and
17 caloric intake for more than 60,000,000 people;
18 and

19 (D) faces increased vulnerability to the im-
20 pacts of global climate change, including sea-
21 level rise, saltwater intrusion, changes in rain-
22 fall patterns and increased severity of extreme
23 weather.

24 (2) Hydro power development, including dams
25 built upstream, is occurring in the Mekong River

1 Basin without sufficient regional and national stra-
 2 tegic development plans for water usage and food se-
 3 curity.

4 (3) Individual projects require more robust as-
 5 sessments of environmental, socioeconomic, and so-
 6 ciopolitical impacts, including cumulative and
 7 transboundary impacts.

8 (4) Without appropriate study, planning, and
 9 coordination, ongoing and future hydro power activi-
 10 ties pose serious environmental, social, and regional
 11 political consequences.

12 (5) The consequences referred to in paragraph
 13 (4)—

14 (A) will generate a food, livelihood, and
 15 human security gap, especially for the most vul-
 16 nerable populations, which will be felt years be-
 17 fore any benefits from increased energy produc-
 18 tion; and

19 (B) may set back the region's hard-won
 20 peace and stability.

21 (b) COORDINATION AND CONSIDERATION OF ENVI-
 22 RONMENTAL AND SOCIAL IMPACTS.—The Secretary of the
 23 Treasury shall instruct the United States Executive Direc-
 24 tor of the Asian Development Bank—

1 (1) to advocate for the Asian Development
2 Bank to encourage best practices in the areas of cli-
3 mate change adaptation, flood and drought manage-
4 ment, hydro power impact assessments, water re-
5 source management, aquatic and terrestrial systems
6 management, food security, and livelihood;

7 (2) to promote the incorporation of cooperative,
8 sustainable and equitable transboundary water man-
9 agement into the activities of the Asian Development
10 Bank;

11 (3) to encourage the Asian Development Bank
12 to enhance its coordination with other multilateral
13 and bilateral assistance programs in the Mekong
14 River Basin to reduce risks to the region's environ-
15 ment, economy, and food security, including through
16 financial and policy support to the Secretariat of the
17 4-country Mekong River Commission (MRC), which
18 will transition from international to regional leader-
19 ship in 2011;

20 (4) to foster Asian Development Bank and bi-
21 lateral donor support to, and coordination with, the
22 U.S. Lower Mekong Initiative (LMI), particularly in
23 the areas of the environment and infrastructure de-
24 velopment, which may include—

1 (A) technology transfers to monitor water
 2 flows and water quality on a basin-wide and
 3 real-time basis;

4 (B) participatory scenario-building, inter-
 5 active workshops, and simulations involving
 6 government officials, nongovernmental organi-
 7 zations, and research organizations to build
 8 technical capacity; and

9 (C) the establishment of subregional cen-
 10 ters of excellence for education, training, and
 11 research on environmental, energy, socio-
 12 economic, and regional cooperation related to
 13 national and transboundary water management;
 14 and

15 (5) to support studies to assess—

16 (A) the interaction between climate change
 17 and proposed water infrastructure projects on
 18 the Mekong River and its major tributaries, es-
 19 pecially hydropower, water transfer, and irriga-
 20 tion projects;

21 (B) the impact of such projects on the
 22 Mekong River's critical environmental services;
 23 and

1 (C) the viability of the Mekong Delta after
2 upstream water development and rising sea lev-
3 els.

4 **SEC. 4. CONFLICT SENSITIVITY.**

5 (a) FINDINGS.—Multilateral development bank ac-
6 tivities in conflict or post-conflict countries may inadvert-
7 ently—

8 (1) fuel existing internal tensions and perceived
9 grievances; and

10 (2) further strain a borrowing country's social
11 fabric.

12 (b) DECLARATION OF POLICY.—It is the policy of the
13 United States to advocate and support the creation and
14 adoption of formal policies and practices—

15 (1) that ensure conflict sensitivity in lending;

16 (2) that enhance development effectiveness by
17 ensuring that multilateral development banks pur-
18 sue, to the maximum extent practicable, opportuni-
19 ties for addressing causes and consequences of the
20 country's conflict; and

21 (3) that ensure that—

22 (A) benefits from projects are trans-
23 parently and appropriately distributed;

1 (B) potential tensions are mitigated
2 through broad consultations and appropriate re-
3 dress mechanisms;

4 (C) project implementation is sufficiently
5 conflict-sensitive;

6 (D) conflict-generated needs are ade-
7 quately identified and addressed in projects;
8 and

9 (E) opportunities to strengthen reconcili-
10 ation and awareness have been adequately iden-
11 tified.

12 (c) PROMOTION OF UNITED STATES POLICY.—The
13 Secretary of the Treasury shall instruct the United States
14 Executive Director of each international financial institu-
15 tion to use the voice and vote of the United States to pro-
16 mote the policies and practices described in subsection (b).

17 **SEC. 5. POWER GUIDELINES.**

18 (a) DECLARATION OF POLICY.—It is the policy of the
19 United States to discourage multilateral development
20 banks from providing financing for coal-fired power plants
21 unless—

22 (1) the multilateral development bank has pro-
23 vided, as necessary, financing or technical assistance
24 to develop the institutional and technical capacity of
25 the borrower country to examine supply and demand

1 side alternatives to new coal-fired power plants, in-
2 cluding the borrower's capacity to compare alter-
3 natives based on a full-cost accounting of projects,
4 taking into account their social, health, and environ-
5 mental costs;

6 (2) the multilateral development bank has ana-
7 lyzed—

8 (A) the technical and economic feasibility
9 of no-carbon and low-carbon alternatives;

10 (B) the financial resources available for
11 such alternatives;

12 (C) the possible deployment of such re-
13 sources in selecting a no-carbon or low-carbon
14 alternative; and

15 (D) the degree to which the project sup-
16 ports efforts to provide electricity access to the
17 poor;

18 (3) after completing the analysis described in
19 paragraph (2), the multilateral development bank
20 has determined that a viable alternative to the new
21 coal-fired power plant does not exist;

22 (4) the project uses best available technology
23 (for the size and duty cycle of the plant) for reduc-
24 ing greenhouse gas emissions, except, for countries
25 eligible for resources from the International Develop-

1 ment Association and not eligible for loans from the
2 International Bank for Reconstruction and Develop-
3 ment, if the project—

4 (A) addresses critical national security en-
5 ergy needs that cannot otherwise be met;

6 (B) responds to national short-term emer-
7 gencies; or

8 (C) overcomes substantial constraints on
9 national economic development when no viable
10 alternatives exist; and

11 (5) projects in countries eligible for resources
12 from the International Development Association and
13 loans from the International Bank for Reconstruc-
14 tion and Development or in countries eligible only
15 for loans from the International Bank for Recon-
16 struction and Development are accompanied by con-
17 crete, well-developed plans, including financing op-
18 tions, to the extent possible, that, in the aggregate,
19 will offset the greenhouse gas emissions from the
20 coal-fired power plants once the plans are fully im-
21 plemented.

22 (b) EFFECT OF NONCOMPLIANCE.—If the relevant
23 multilateral development bank considering a coal-fired
24 power generation project in a country that is other than
25 a country eligible for resources from the International De-

1 velopment Association and not eligible for loans from the
2 International Bank for Reconstruction and Development
3 has not met the conditions described in paragraphs (1)
4 through (5) of subsection (a), the Secretary of the Treas-
5 ury shall instruct the United States Executive Director to
6 that multilateral development bank to vote against the ex-
7 tension by that institution of any loan or other financial
8 assistance for such coal-fired power generation project.

9 (c) EFFECT OF PARTIAL COMPLIANCE.—Notwith-
10 standing subsection (b), if the relevant multilateral devel-
11 opment bank described in subsection (b) has fully consid-
12 ered and met some, but not all, of the conditions described
13 in paragraphs (1) through (5) of subsection (a) and the
14 Secretary of the Treasury determines that substantial and
15 significant steps have been taken to address the remaining
16 unmet conditions, the Secretary of the Treasury shall in-
17 struct the United States Executive Director to that multi-
18 lateral development bank to vote against or abstain from
19 voting for the extension by that institution of any loan
20 or other financial assistance for such coal-fired power gen-
21 eration project.

22 (d) ANNUAL REPORT.—In each of the 4 years fol-
23 lowing the date of the enactment of this Act, the Secretary
24 of the Treasury shall submit a report to the appropriate
25 congressional committees that includes—

1 (1) a description and assessment of the coal-
2 fired power generation project approved at each mul-
3 tilateral development bank in the previous 2 years,
4 the financial assistance extended by each multilat-
5 eral development bank, and the level of financing
6 and implementation of plans described in subsection
7 (a)(5);

8 (2) a list of the voting positions taken by the
9 United States Executive Director for all relevant
10 votes;

11 (3) a determination and analysis of the degree
12 to which each condition described in subsection (a)
13 has been met; and

14 (4) if the United States Executive Director
15 voted to abstain on a loan or other financial assist-
16 ance pursuant to subsection (c)—

17 (A) a description of efforts undertaken by
18 the multilateral development bank or borrower
19 to meet the standards under subsection (a); and

20 (B) an assessment of additional reasonable
21 efforts that could have been undertaken, but
22 did not take place.

23 (e) 5-YEAR REPORT.—Not later than 5 years after
24 the date of the enactment of this Act, the Secretary of

1 the Treasury shall submit a report to the appropriate con-
 2 gressional committees that includes—

3 (1) an analysis of the impact of the policies set
 4 forth in this section; and

5 (2) an analysis of the continued relevance of
 6 such policies and recommended changes after taking
 7 into account the impact of the policies and other
 8 changes in multilateral development bank energy
 9 sector lending.

10 **SEC. 6. ENERGY SUBSIDIES AND GLOBAL CLIMATE**
 11 **CHANGE.**

12 (a) FINDINGS.—Congress makes the following find-
 13 ings:

14 (1) Inefficient fossil fuel subsidies—

15 (A) encourage wasteful consumption;

16 (B) distort markets;

17 (C) reduce the Nation's energy security;

18 (D) impede investment in advanced and
 19 cleaner energy sources; and

20 (E) undermine efforts to deal with the
 21 threat of climate change.

22 (2) According to the International Energy
 23 Agency, the costs of fossil fuel consumption sub-
 24 sidies are approximately \$557,000,000,000 per year.

25 (3) The poorest countries are often—

1 (A) the most exposed to the impacts of cli-
2 mate change; and

3 (B) the least able to protect their vulner-
4 able populations and communities.

5 (4) Multilateral development banks are in a po-
6 sition to work with a range of stakeholders in devel-
7 oping countries, including other donors—

8 (A) to pursue low-carbon growth opportu-
9 nities; and

10 (B) to support efforts to boost climate
11 change resiliency that also support poverty alle-
12 viation.

13 (b) DECLARATION OF POLICY.—It is the policy of the
14 United States—

15 (1) to promote the phasing out and rationaliza-
16 tion of inefficient fossil fuel subsidies;

17 (2) to encourage all nations to adopt policies
18 that will phase out such subsidies worldwide, while
19 striving to alleviate adverse impact on the poorest
20 individuals;

21 (3) to provide public financial assistance to sup-
22 port the deployment of sustainable clean energy in
23 developing countries; and

24 (4) to support efforts to increase the resiliency
25 of developing countries, populations, and commu-

1 nities most vulnerable to the impacts of climate
2 change.

3 (c) PROMOTION OF UNITED STATES POLICY.—The
4 Secretary of the Treasury shall instruct the United States
5 Executive Director of each international financial institu-
6 tion to use the voice and vote of the United States to pro-
7 mote the policy described in subsection (b) with a focus
8 on the poorest countries and countries that are most vul-
9 nerable to the impacts of climate change.

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