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1ST SESSION

S. 1388

To support private sector development, employment growth, rule of law, democratic reform, and accountable government in qualified transition countries in the Middle East and North Africa through the authorization of the participation by the United States in the general capital increase of the European Bank for Reconstruction and Development, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2011

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

A BILL

To support private sector development, employment growth, rule of law, democratic reform, and accountable government in qualified transition countries in the Middle East and North Africa through the authorization of the participation by the United States in the general capital increase of the European Bank for Reconstruction and Development, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Middle East and North
3 Africa Transition and Development Act”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) The European Bank for Reconstruction and
7 Development was created to support the transition
8 of command economies to market economies fol-
9 lowing the collapse of communist regimes in 1989.

10 (2) The Bank is the only international financial
11 institution that—

12 (A) has a transition mandate;

13 (B) includes political aspects to its man-
14 date; and

15 (C) seeks to assist only those countries
16 that are committed to, and are applying, the
17 principles of multiparty democracy, pluralism,
18 and development of market economics in ac-
19 cordance with Article 1 of the Agreement Es-
20 tablishing the European Bank for Reconstruc-
21 tion and Development.

22 (3) Egypt, which is a current shareholder of the
23 Bank, has requested that the Bank consider Egypt’s
24 candidacy for becoming a country of activity. Con-
25 sideration for including Egypt in the Bank’s geo-

1 graphic mandate has been accelerated at the request
2 of Egypt's interim government.

3 (4) Other countries from the Middle East and
4 North Africa, including Tunisia, have requested that
5 the Bank consider their potential to become coun-
6 tries of activity.

7 (5) The Bank estimates that approximately
8 \$4,000,000,000 per year could be provided for finan-
9 cial investment in new countries of activity in North
10 Africa from the Bank's existing financial resources,
11 without the need to call on its shareholders for addi-
12 tional capital.

13 (6) The functions of the Bank are consistent
14 with the critical and rising economic needs of Egypt
15 and the Middle East and North Africa.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) AGREEMENT ESTABLISHING THE EUROPEAN
19 BANK FOR RECONSTRUCTION AND DEVELOPMENT.—
20 The term "Agreement Establishing the European
21 Bank for Reconstruction and Development" means
22 the Agreement establishing the European Bank for
23 Reconstruction and Development, done at Paris May
24 29, 1990, and entered into force March 28, 1991.

1 (2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Foreign Relations
5 and the Committee on Appropriations of the
6 Senate; and

7 (B) the Committee on Financial Services
8 and the Committee on Appropriations of the
9 House of Representatives.

10 (3) BANK.—The term “Bank” means the Euro-
11 pean Bank for Reconstruction and Development.

12 (4) COUNTRY OF ACTIVITY.—The term “coun-
13 try of activity” means a country in which the Bank
14 provides its resources for loans or other assistance,
15 including through the use of special funds.

16 (5) INTERNATIONAL FINANCIAL INSTITU-
17 TION.—The term “international financial institu-
18 tion” has the meaning given that term in section
19 1701(c)(2) of the International Financial Institu-
20 tions Act (22 U.S.C. 262r(c)(2)).

21 (6) MULTILATERAL DEVELOPMENT BANK.—
22 The term “multilateral development bank” has the
23 meaning given that term in section 1701(c)(4) of the
24 International Financial Institutions Act (22 U.S.C.
25 262r(c)(4)).

1 **SEC. 4. UNITED STATES POLICY WITH RESPECT TO COUN-**
2 **TRIES LOCATED IN THE MIDDLE EAST AND**
3 **NORTH AFRICA.**

4 (a) **POLICY DECLARATION.**—It is the policy of the
5 United States—

6 (1) to support a successful and sustainable
7 transition to democracy in the Middle East and
8 North Africa, including Egypt and Tunisia, that re-
9 flects the legitimate aspirations of the people in that
10 region for greater political freedom and economic op-
11 portunity; and

12 (2) to increase economic prosperity in that re-
13 gion through financial investment and technical as-
14 sistance and by utilizing the resources of appropriate
15 multilateral development banks.

16 (b) **PROMOTION OF UNITED STATES POLICY.**—The
17 Secretary of the Treasury should instruct the United
18 States Executive Director of the European Bank for Re-
19 construction and Development to use the voice and vote
20 of the United States to promote the policies described in
21 subsection (a).

1 **SEC. 5. NEGOTIATING OBJECTIVES WITH RESPECT TO AN**
2 **AGREEMENT TO EXPAND THE MANDATE OF**
3 **THE EUROPEAN BANK FOR RECONSTRUC-**
4 **TION AND DEVELOPMENT TO COUNTRIES LO-**
5 **CATED IN THE MIDDLE EAST AND NORTH AF-**
6 **RICA.**

7 (a) IN GENERAL.—The negotiating objectives of the
8 United States with respect to an agreement described in
9 subsection (b) should be to seek—

10 (1) criteria that are consistent with the criteria
11 described in section 6(b) for the approval of loans or
12 other assistance by the Bank for countries that be-
13 come countries of activity as a result of the imple-
14 mentation of the agreement; and

15 (2) the establishment by the Bank of a credible
16 mechanism to ensure that countries of activity that
17 are not committed to the fundamental principles of
18 multiparty democracy, pluralism, and market eco-
19 nomics do not continue to benefit from the resources
20 of the Bank.

21 (b) AGREEMENT DESCRIBED.—An agreement de-
22 scribed in this subsection is an agreement to expand the
23 use of the resources of the Bank for countries located in
24 the Middle East or North Africa, including through an
25 amendment to the Agreement Establishing the European
26 Bank for Reconstruction and Development.

1 **SEC. 6. SUPPORT FOR LOANS AND OTHER ASSISTANCE**
2 **PROVIDED BY THE BANK TO COUNTRIES OF**
3 **ACTIVITY THAT MEET CERTAIN CRITERIA.**

4 (a) IN GENERAL.—The Secretary of the Treasury
5 should instruct the United States Executive Director of
6 the Bank to use the voice and vote of the United States
7 to oppose the approval of a loan or other assistance from
8 the Bank to a country of activity in the Middle East or
9 North Africa if the country does not meet the criteria de-
10 scribed in subsection (b).

11 (b) CRITERIA DESCRIBED.—A country of activity
12 meets the criteria described in this subsection if the gov-
13 ernment of the country—

14 (1) requests the Bank to conduct activities in
15 the country;

16 (2) meets, or is demonstrably committed to
17 meeting, the criteria set forth in Article 1 of the
18 Agreement Establishing the European Bank for Re-
19 construction and Development, including a commit-
20 ment to “the principles of multiparty democracy,
21 pluralism and market economics”;

22 (3) demonstrates a commitment to free, fair,
23 and inclusive elections that meet international stand-
24 ards;

25 (4) has a public commitment to universally rec-
26 ognized human rights and freedoms, including free-

1 dom of religion, association, assembly, and expres-
2 sion, and demonstrates a commitment to respect
3 those rights and freedoms in practice; and

4 (5) implements, or is demonstrably committed
5 to implementing, economic reforms that advance pri-
6 vate sector growth, improve the investment climate,
7 increase transparency, especially transparency in
8 public finances, and foster job creation.

9 (c) CONSULTATIONS WITH CONGRESS WITH RE-
10 SPECT TO NEW COUNTRIES OF ACTIVITY.—Not later than
11 10 days before a vote of the Board of Directors or the
12 Board of Governors of the Bank to approve a country lo-
13 cated in the Middle East or in North Africa as a new coun-
14 try of activity, the Secretary of the Treasury shall—

15 (1) notify the appropriate congressional com-
16 mittees of the vote; and

17 (2) consult with those committees and describe
18 to those committees how that country meets the cri-
19 teria established by the Bank for being a country of
20 activity.

21 (d) ANNUAL REPORT.—Not later than one year after
22 the date of the enactment of this Act, and annually there-
23 after until the fifth year after such date of enactment, the
24 Secretary of the Treasury shall submit to the appropriate

1 congressional committees a report that includes the fol-
2 lowing:

3 (1) A description of the activities of the Bank
4 in each country of activity that is located in the Mid-
5 dle East or in North Africa.

6 (2) The assessment of the Bank with respect to
7 the ongoing eligibility of each such country to receive
8 assistance from the Bank.

9 (3) A description of how the activities carried
10 out by the Bank in each such country during the
11 preceding year served to promote the functions of
12 the Bank, as described in Article 2 of the Agreement
13 Establishing the European Bank for Reconstruction
14 and Development.

15 (4) An assessment of—

16 (A) the extent to which the activities of the
17 Bank are complementary to the activities of
18 other international financial institutions oper-
19 ating in the Middle East and North Africa; and

20 (B) the extent of cooperation between the
21 Bank and those other international financial in-
22 stitutions.

23 (5) A list of any countries being considered to
24 be new countries of activity.

1 **SEC. 7. SUPPORT FOR CLEAR STANDARDS FOR GRADUA-**
2 **TION OF COUNTRIES OF ACTIVITY.**

3 The Secretary of the Treasury should instruct the
4 United States Executive Director of the Bank to use the
5 voice and vote of the United States to seek the adoption
6 by the Bank of clear standards for the successful gradua-
7 tion of countries of activity if those countries have sub-
8 stantially achieved the transition objectives of the Bank.

9 **SEC. 8. AUTHORIZATION FOR THE EUROPEAN BANK FOR**
10 **RECONSTRUCTION AND DEVELOPMENT.**

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

13 (1) The request by the European Bank for Re-
14 construction and Development for subscription of
15 capital is for callable shares only. Historically, call-
16 able shares, while requiring an authorization of
17 funds, do not require an appropriation.

18 (2) The International Programs Justification
19 for Appropriations and Fiscal Year 2012 Budget
20 Request of the Department of the Treasury for the
21 European Bank for Reconstruction and Development
22 is \$0, stating that “[t]his callable capital does not
23 require appropriated funds”.

24 (b) AUTHORIZATION.—The European Bank for Re-
25 construction and Development Act (section 562(e) of Pub-

1 lie Law 101–531; 22 U.S.C. 290*l* et seq.) is amended by
2 adding at the end the following:

3 “(12) CAPITAL INCREASE.—

4 “(A) SUBSCRIPTION AUTHORIZED.—

5 “(i) IN GENERAL.—The United States
6 Governor of the Bank may subscribe on
7 behalf of the United States to not more
8 than 90,044 additional callable shares of
9 capital stock of the Bank, in accordance
10 with Resolution 128, as adopted by the
11 Board of Governors of the Bank at the an-
12 nual meeting in Zagreb, Croatia, on May
13 14, 2010.

14 “(ii) CONDITION.—Any subscription
15 by the United States to additional capital
16 stock of the Bank shall be effective only to
17 such extent and in such amounts as are
18 provided for in advance by appropriations
19 Acts.

20 “(B) AUTHORIZATION OF APPROPRIA-
21 TIONS.—In order to pay for the increase in the
22 United States subscription to capital stock of
23 the Bank authorized under subparagraph (A),
24 there are authorized to be appropriated

1 \$1,252,331,952, without fiscal year limitation,
2 for payment by the Secretary of the Treasury.”.

3 **SEC. 9. STATUS OF COUNTRIES AS CANDIDATE COUNTRIES**
4 **UNDER THE MILLENNIUM CHALLENGE ACT**
5 **OF 2003.**

6 Section 606 of the Millennium Challenge Act of 2003
7 (22 U.S.C. 7705) is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1)—

10 (i) by amending the paragraph head-
11 ing to read as follows:

12 “(1) IN GENERAL.—”;

13 (ii) in the matter preceding subpara-
14 graph (A), by striking “fiscal year 2004”
15 and inserting “any fiscal year”;

16 (iii) by amending subparagraph (A) to
17 read as follows:

18 “(A) the country—

19 “(i) has a per capita income that is
20 not greater than the World Bank’s lower
21 middle income country threshold for such
22 fiscal year; and

23 “(ii) is among the 75 lowest per cap-
24 ita income countries, as identified by the
25 World Bank; and”;

1 (iv) in subparagraph (B), by striking
2 “subject to paragraph (3)” and inserting
3 “subject to paragraph (2)”;
4 (B) by striking paragraph (2); and
5 (C) by redesignating paragraph (3) as
6 paragraph (2);
7 (2) in subsection (b)—
8 (A) in paragraph (1)—
9 (i) in the matter preceding subpara-
10 graph (A), by striking “for fiscal year
11 2006 or a subsequent fiscal year” and in-
12 serting “for any fiscal year”; and
13 (ii) by striking subparagraphs (A) and
14 (B) and inserting the following:
15 “(A) has a per capita income that is not
16 greater than the World Bank’s lower middle in-
17 come country threshold for such fiscal year;
18 “(B) is not among the 75 lowest per capita
19 income countries as identified by the World
20 Bank; and
21 “(C) meets the requirements under sub-
22 section (a)(1)(B).”; and
23 (B) in paragraph (2)—

1 (i) by striking “for fiscal year 2006 or
2 any subsequent fiscal year” and inserting
3 “for any fiscal year”; and

4 (ii) by striking “for fiscal year 2006
5 or the subsequent fiscal year, as the case
6 may be” and inserting “for such fiscal
7 year”;

8 (3) by redesignating subsection (c) as sub-
9 section (d); and

10 (4) by inserting after subsection (b) the fol-
11 lowing:

12 “(c) MAINTAINING CANDIDATE STATUS.—Beginning
13 in fiscal year 2012, a country the per capita income of
14 which changes during a fiscal year so that the country
15 no longer meets the requirements for being a candidate
16 country under subsection (a)(1) or (b)(1) shall, notwith-
17 standing that change in per capita income, continue to be
18 eligible to be a candidate country under subsection (a)(1)
19 or (b)(1) (as the case may be) during that fiscal year and
20 the 3 fiscal years thereafter to the same extent and in
21 the same manner as if the per capita income of the coun-
22 try had not changed.”.

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