

117TH CONGRESS
1ST SESSION

S. 1405

To authorize the imposition of sanctions with respect to significant actions that exacerbate climate change, to reinforce comprehensive efforts to limit global average temperature rise, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2021

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize the imposition of sanctions with respect to significant actions that exacerbate climate change, to reinforce comprehensive efforts to limit global average temperature rise, 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 “Targeting Environ-
5 mental and Climate Recklessness Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Climate change is imposing significant dam-
2 age on communities in the United States and abroad
3 in the form of severe weather events, wildfires, heat
4 waves, droughts, flooding, ocean acidification, and
5 other threats to public health and safety. Scientists
6 expect these effects to grow in frequency and inten-
7 sity in the coming decades. Low-income communities
8 and communities of color bear a disproportionate
9 impact of climate-related damages.

10 (2) Collectively, the international community
11 needs to limit global warming to under 2.7 degrees
12 Fahrenheit above pre-industrial levels in order to
13 avoid the most catastrophic effects of climate
14 change. Under the current trajectory, the world will
15 fail to meet this target and will experience warming
16 that exceeds 3 degrees Celsius by the end of the cen-
17 tury. In many regions of the world, warming of aver-
18 age temperatures has already surpassed 3 degrees
19 Fahrenheit.

20 (3) To limit global warming to under 1.5 de-
21 grees Celsius above pre-industrial levels, the world
22 needs to reach net-zero global emissions by 2050,
23 which will require making drastic reforms to global
24 economic systems to mitigate greenhouse gas emis-
25 sions, reduce deforestation, reduce dependency on

1 coal, adapt to unavoidable changes in the climate,
2 and ensure a just transition.

3 (4) The goals articulated in the United Nations
4 Paris Climate Agreement depend on collective action
5 involving the entire international community.
6 Progress made by one economic actor can be re-
7 duced or cancelled out if another economic actor
8 emits significant greenhouse gas emissions into the
9 Earth's atmosphere.

10 (5) Coal produces the highest intensity of
11 greenhouse gas emissions of any fuel source. The
12 International Energy Agency estimates that coal is
13 responsible for nearly $\frac{1}{3}$ of global warming. The
14 United Nations Secretary General has repeatedly
15 urged countries to stop financing coal and to pledge
16 not to build new coal-fired power plants.

17 (6) Subcritical coal-fired power plants continue
18 to be developed, especially in Southeast Asia and as
19 part of the Belt and Road Initiative of the People's
20 Republic of China, despite broad awareness of the
21 dangers and the growing availability of economically
22 superior alternatives. Additionally, coal mining is
23 frequently associated with a wide range of human
24 rights abuses, such as forced evictions and land

1 grabbing, water and air pollution, and violations of
2 the rights of indigenous people and workers.

3 (7) Alternatives to carbon-intensive electrical
4 power generation are now available and technological
5 advancements continue to strengthen the economic
6 competitiveness of such alternatives.

7 (8) Internationally, several economic actors con-
8 tinue to pursue activities, such as development of
9 new subcritical coal-fired power plants and deforest-
10 ation that contribute to dangerous levels of green-
11 house gas emissions. In addition to carrying a sig-
12 nificant climate risk, many of these activities are as-
13 sociated with serious human rights abuses, acts of
14 corruption, and environmental injustice against In-
15 digenous communities, communities of color, and
16 other communities that have historically faced
17 marginalization and discrimination.

18 (9) The United States Government has devel-
19 oped and implements targeted measures to restrict
20 access to the United States financial system for spe-
21 cific individuals and entities whose actions threaten
22 or run counter to United States national interests.
23 The United States Government has deployed these
24 measures in response to terrorism, proliferation of
25 weapons of mass destruction, transnational orga-

1 nized crime, narcotics trafficking, malicious cyber-
2 enabled activity, wildlife trafficking, serious human
3 rights abuses, and acts of corruption. While Presi-
4 dent Joseph R. Biden has further centered climate
5 solutions in foreign policy, as of the date of the en-
6 actment of this Act, the United States Government
7 has not used these measures to target and deter
8 reckless, climate-destroying behavior.

9 (10) President Biden has indicated that com-
10 bating the climate crisis is a top domestic and for-
11 eign policy priority and has taken steps including
12 the creation of a Special Presidential Envoy for Cli-
13 mate, collaborating with other countries to establish
14 worldwide solutions and reduce the impact of climate
15 change, striving to achieve a net-zero economy in the
16 United States by 2050, producing a plan to end
17 international financing for fossil fuel projects, and
18 emphasizing the need of pursuing an entirely clean
19 energy economy.

20 (11) President Biden has made it a priority to
21 counter environmental injustices in the United
22 States and abroad, and plans on implementing com-
23 munity-led approaches as well as Federal protections
24 and regulations that will support those community

1 members whose land and health have been negatively
2 impacted by climate change.

3 (12) The climate crisis has led to a surge of
4 civic engagement, activism, and protests across the
5 world. At the same time, reprisals against environ-
6 mental defenders are on the rise. Front Line De-
7 fenders reported that of the 331 human rights de-
8 fenders killed for their work in 2020, 69 percent
9 were killed for speaking up about Indigenous, land,
10 or environmental rights. In 2020, Global Witness re-
11 ported that an average of 4 environmental defenders
12 had been killed every week since the Paris Climate
13 Agreement was signed in December 2015. Thou-
14 sands of other environmental defenders are targeted
15 each year with reprisals in the form of enforced dis-
16 appearances, torture, sexual violence, criminaliza-
17 tion, and smear campaigns.

18 (13) As a result of corruption and illegally
19 issued permits for forest clearance, only approxi-
20 mately 50 percent of tropical forest destruction is
21 defined as “illegal” under local country laws. Criti-
22 cally, violations of land rights and the free, prior,
23 and informed consent and rights of Indigenous peo-
24 ple can be overlooked if the only criterion applied is
25 legality.

1 (14) Illegal deforestation is a significant driver
2 of the destruction of the Amazon rainforest. Crimi-
3 nal networks with the capacity to coordinate large-
4 scale extraction, processing, and sale of timber de-
5 ploy armed personnel to protect their interests.
6 Those criminal networks regularly attack and
7 threaten members of Indigenous communities, en-
8 forcement officials, and other environmental defend-
9 ers. Perpetrators of such violence are rarely brought
10 to justice.

11 (15) Policies and measures to address climate
12 change must also promote human rights, thereby ad-
13 vancing equality, justice, and dignity for all, in line
14 with the Sustainable Development Goals of the
15 United Nations.

16 **SEC. 3. SENSE OF CONGRESS ON A COMPREHENSIVE AP-**
17 **PROACH TO ADDRESSING CLIMATE CHANGE.**

18 It is the sense of Congress that—

19 (1) the targeted measures described in this Act
20 are only one component of the comprehensive ap-
21 proach needed to address climate change and miti-
22 gate its effects;

23 (2) the United States Government must ensure
24 through law and regulation that entities in the
25 United States are not engaged in or complicit in any

1 of the egregious behaviors for which foreign persons
2 may be targeted under this Act;

3 (3) the United States Government must fulfill
4 its pledges to the Green Climate Fund and promote
5 international efforts to support climate change adap-
6 tation and mitigation;

7 (4) the United States Government must work
8 proactively with foreign governments, including by
9 offering positive incentives, to address climate
10 change and to promote economic development in
11 ways that do not needlessly increase carbon emis-
12 sions or increase the risk of corruption;

13 (5) the targeted measures described in this Act
14 should be employed if engagement has failed to pre-
15 vent significant actions that exacerbate climate
16 change; and

17 (6) given broad international support for coun-
18 tering climate change, the Secretary of State should
19 encourage the governments of other countries to im-
20 plement targeted measures that are similar to the
21 provisions of this Act, and the Secretary of the
22 Treasury should support implementation of such
23 measures, in order to increase the effectiveness of
24 actions taken by the United States to combat signifi-

1 cant actions that exacerbate climate change, includ-
2 ing related corruption and human rights violations.

3 **SEC. 4. SENSE OF CONGRESS ON ENGAGEMENT WITH THE**
4 **PEOPLE’S REPUBLIC OF CHINA.**

5 It is the sense of Congress that—

6 (1) the United States Government should con-
7 tinue to hold the People’s Republic of China ac-
8 countable for its human rights abuses, violations of
9 international law, coercive and unfair economic prac-
10 tices, and military aggression, and should do so
11 while also pursuing opportunities to cooperatively
12 address the existential threat of climate change;

13 (2) the United States Government should en-
14 courage the People’s Republic of China to follow
15 through on its stated intentions to reduce the nega-
16 tive environmental impacts of Chinese foreign invest-
17 ment, including investments provided through the
18 Belt and Road Initiative;

19 (3) the United States Government should nego-
20 tiate a binding agreement to end fossil fuel subsidies
21 with major economies including the People’s Repub-
22 lic of China;

23 (4) the United States Government should build
24 on the successes of existing engagement with the
25 People’s Republic of China through the United

1 States-China Clean Energy Research Center and
2 other initiatives to launch new cooperative efforts;

3 (5) the United States Government should en-
4 gage in expanded dialogue with the People's Repub-
5 lic of China to ensure that development finance in-
6 stitutions do not undermine global decarbonization
7 efforts; and

8 (6) the United States Government should work
9 with the People's Republic of China to develop and
10 adopt safeguards to promote low-carbon, climate-re-
11 silient investments over high-carbon, climate risk-in-
12 ducing investments, particularly in emerging and de-
13 veloping economies in the Indo-Pacific, Africa, and
14 Latin America.

15 **SEC. 5. STATEMENT OF POLICY ON APPLICATION OF GLOB-**
16 **AL MAGNITSKY SANCTIONS TO CLIMATE-**
17 **LINKED CORRUPTION AND HUMAN RIGHTS**
18 **ABUSES.**

19 (a) IN GENERAL.—It is the policy of the United
20 States to consider—

21 (1) any act of corruption related to a covered
22 activity (as defined in section 6(i)) to be corruption,
23 as that term is used in Executive Order 13818 (50
24 U.S.C. 1701 note; relating to blocking the property

1 of persons involved in serious human rights abuse or
2 corruption); and

3 (2) any violation of internationally recognized
4 human rights committed against an individual de-
5 scribed in subsection (b) to be a serious human
6 rights abuse, as that term is used in Executive
7 Order 13818.

8 (b) INDIVIDUALS DESCRIBED.—An individual de-
9 scribed in this subsection is an individual who—

10 (1) advocates for the protection of the environ-
11 ment, public health, Indigenous rights, or commu-
12 nity land rights;

13 (2) investigates, exposes, or raises awareness of
14 harm or corruption related to natural resource use;
15 or

16 (3) is obliged to leave the individual's habitual
17 home due, in whole or in part, to sudden or progres-
18 sive change in the environment that adversely affects
19 the individual's life or living conditions.

20 **SEC. 6. IMPOSITION OF SANCTIONS WITH RESPECT TO SIG-**
21 **NIFICANT ACTIONS THAT EXACERBATE CLI-**
22 **MATE CHANGE.**

23 (a) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that the President should employ the authorities
25 provided by this section to prioritize action against, and

1 deterrence of, egregious behaviors that undermine efforts
2 to limit the increase in global average temperature to 1.5
3 degrees Celsius above pre-industrial levels.

4 (b) IN GENERAL.—The President may impose one or
5 more of the sanctions described in subsection (c) with re-
6 spect to any foreign person the President determines,
7 based on credible information—

8 (1) to be responsible for or complicit in, or to
9 have directly or indirectly engaged in, a covered ac-
10 tivity, including a government official who approves
11 or implements policies or acts that serve to promote
12 a covered activity;

13 (2) to have acted or purported to act for or on
14 behalf of, directly or indirectly, any foreign person in
15 a matter relating to a covered activity, including for
16 or on behalf of a government official described in
17 paragraph (1);

18 (3) to have materially assisted, sponsored, or
19 provided financial, material, or technological support
20 for, or goods or services to or in support of, a cov-
21 ered activity; or

22 (4) to be owned or controlled by a foreign per-
23 son described in paragraph (1).

1 (c) SANCTIONS DESCRIBED.—The sanctions that
2 may be imposed with respect to a foreign person under
3 subsection (b) are the following:

4 (1) INADMISSIBILITY TO UNITED STATES.—In
5 the case of a foreign person who is an individual—

6 (A) ineligibility to receive a visa to enter
7 the United States or to be admitted to the
8 United States; or

9 (B) if the individual has been issued a visa
10 or other documentation, revocation, in accord-
11 ance with section 221(i) of the Immigration and
12 Nationality Act (8 U.S.C. 1201(i)), of the visa
13 or other documentation.

14 (2) BLOCKING OF PROPERTY.—

15 (A) IN GENERAL.—The blocking, in ac-
16 cordance with the International Emergency
17 Economic Powers Act (50 U.S.C. 1701 et seq.),
18 of all transactions in all property and interests
19 in property of the foreign person if such prop-
20 erty and interests in property are in the United
21 States, come within the United States, or are or
22 come within the possession or control of a
23 United States person.

24 (B) INAPPLICABILITY OF NATIONAL EMER-
25 GENCY REQUIREMENT.—The requirements of

1 section 202 of the International Emergency
2 Economic Powers Act (50 U.S.C. 1701) shall
3 not apply for purposes of this paragraph.

4 (3) OTHER SANCTIONS OPTIONS.—Any of the
5 sanctions described in section 235 of the Countering
6 America’s Adversaries Through Sanctions Act (22
7 U.S.C. 9529).

8 (d) CONSIDERATION OF CERTAIN INFORMATION IN
9 IMPOSING SANCTIONS.—In determining whether to im-
10 pose sanctions under subsection (b), the President shall
11 consider—

12 (1) information provided jointly by the chair-
13 person and ranking member of each of the appro-
14 priate congressional committees; and

15 (2) credible information obtained by other coun-
16 tries and nongovernmental organizations that mon-
17 itor environmental harm or violations of human
18 rights.

19 (e) REQUESTS BY APPROPRIATE CONGRESSIONAL
20 COMMITTEES.—

21 (1) IN GENERAL.—Not later than 120 days
22 after receiving a request that meets the require-
23 ments of paragraph (2) with respect to whether a
24 foreign person has engaged in an action described in
25 subsection (a), the President shall—

1 (A) determine if that person has engaged
2 in such an action; and

3 (B) submit a classified or unclassified re-
4 port to the chairperson and ranking member of
5 the committee or committees that submitted the
6 request with respect to that determination that
7 includes—

8 (i) a statement of whether or not the
9 President imposed or intends to impose
10 sanctions with respect to the person; and

11 (ii) if the President imposed or in-
12 tends to impose sanctions, a description of
13 those sanctions.

14 (2) REQUIREMENTS.—A request under para-
15 graph (1) with respect to whether a foreign person
16 has engaged in an action described in subsection (b)
17 shall be submitted to the President in writing jointly
18 by the chairperson and ranking member of one of
19 the appropriate congressional committees.

20 (f) EXCEPTIONS.—

21 (1) INTELLIGENCE AND LAW ENFORCEMENT
22 ACTIVITIES.—Sanctions under this section shall not
23 apply with respect to—

1 (A) any activity subject to the reporting
2 requirements under title V of the National Se-
3 curity Act of 1947 (50 U.S.C. 3091 et seq.); or

4 (B) any authorized intelligence or law en-
5 forcement activities of the United States.

6 (2) COMPLIANCE WITH UNITED NATIONS HEAD-
7 QUARTERS AGREEMENT.—This section shall not
8 apply with respect to the admission of an individual
9 to the United States if the admission of the indi-
10 vidual is necessary to comply with United States ob-
11 ligations under the Agreement between the United
12 Nations and the United States of America regarding
13 the Headquarters of the United Nations, signed at
14 Lake Success June 26, 1947, and entered into force
15 November 21, 1947, under the Convention on Con-
16 sular Relations, done at Vienna April 24, 1963, and
17 entered into force March 19, 1967, or under other
18 international obligations of the United States.

19 (3) EXCEPTION RELATING TO IMPORTATION OF
20 GOODS.—

21 (A) IN GENERAL.—The authority to block
22 and prohibit all transactions in all property and
23 interests in property under this section shall not
24 include the authority to impose sanctions on the
25 importation of goods.

1 (B) GOOD DEFINED.—In this paragraph,
2 the term “good” means any article, natural or
3 man-made substance, material, supply or manu-
4 factured product, including inspection and test
5 equipment, and excluding technical data.

6 (g) IMPLEMENTATION; PENALTIES.—

7 (1) IMPLEMENTATION.—The President may ex-
8 ercise all authorities provided under sections 203
9 and 205 of the International Emergency Economic
10 Powers Act (50 U.S.C. 1702 and 1704) to carry out
11 this section.

12 (2) PENALTIES.—A person that violates, at-
13 tempts to violate, conspires to violate, or causes a
14 violation of this section or any regulation, license, or
15 order issued to carry out this section shall be subject
16 to the penalties set forth in subsections (b) and (c)
17 of section 206 of the International Emergency Eco-
18 nomic Powers Act (50 U.S.C. 1705) to the same ex-
19 tent as a person that commits an unlawful act de-
20 scribed in subsection (a) of that section.

21 (h) REPORT REQUIRED.—Not later than one year
22 after the date of the enactment of this Act, and annually
23 thereafter, the Secretary of Energy, in consultation with
24 the Secretary of State and the Administrator of the Envi-
25 ronmental Protection Agency, shall submit to the appro-

1 piate congressional committees a report that includes a
 2 list of each activity in a foreign country that—

3 (1) is initiated or negotiated in the year pre-
 4 ceding submission of the report; and

5 (2) the Secretary determines is a covered activ-
 6 ity, regardless of whether sanctions have been im-
 7 posed with respect to the activity.

8 (i) DEFINITIONS.—In this section:

9 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 10 TEES.—The term “appropriate congressional com-
 11 mittees” means—

12 (A) the Committee on Environment and
 13 Public Works and the Committee on Foreign
 14 Relations of the Senate; and

15 (B) the Committee on Energy and Com-
 16 merce and the Committee on Foreign Affairs of
 17 the House of Representatives.

18 (2) CARBON SINK.—The term “carbon sink”
 19 means a feature or process that absorbs more car-
 20 bon from the atmosphere than it releases.

21 (3) COVERED ACTIVITY.—The term “covered
 22 activity” means any activity in a foreign country
 23 that, on or after the date of the enactment of this
 24 Act—

1 (A) causes, or is likely to cause, significant
2 excess greenhouse gas emissions associated with
3 electrical power generation, including—

4 (i) construction, importation, or ex-
5 portation of subcritical coal-fired power
6 plants; or

7 (ii) any action that significantly un-
8 dermines, as a result of timing or mag-
9 nitude, adoption in the country of high-ef-
10 ficiency, low-carbon, or renewable energy
11 technology or infrastructure;

12 (B) causes, or is likely to cause, significant
13 or illegal deforestation or loss of natural carbon
14 sinks, including—

15 (i) establishment of incentives for, or
16 promotion of, systematic deforestation;

17 (ii) engagement in, or failure to com-
18 bat, illegal logging, mining, or ranching; or

19 (iii) unjust actions that limit or cir-
20 cumvent opposition to deforestation by in-
21 dividuals seeking to protect the environ-
22 ment, public health, or community land
23 rights; or

24 (C) knowingly misrepresents the environ-
25 mental impact of a project, investment, or prod-

uct, including misrepresenting the amount of
greenhouse gas emissions associated with the
project, investment, or product, in the context
of—

(i) assessments conducted by multilat-
eral organizations, national governments,
or investors; or

(ii) public efforts to gain market ad-
vantage based on purported environmental
advantages of a product.

(4) DEFORESTATION.—The term “deforest-
ation” means a loss of natural forest resulting from
the whole or partial conversion of natural forest to—

(A) agriculture or another non-forest land
use; or

(B) a tree plantation.

(5) KNOWINGLY.—The term “knowingly”, with
respect to conduct, a circumstance, or a result,
means that a person has actual knowledge, or should
have known, of the conduct, the circumstance, or the
result.

(6) FOREIGN PERSON.—The term “foreign per-
son” means a person that is not a United States
person.

1 (7) SUBCRITICAL COAL-FIRED POWER PLANT.—

2 The term “subcritical coal-fired power plant” means
 3 a coal-fired power plant with carbon intensity equal
 4 to or greater than 880 kilograms of carbon dioxide
 5 per megawatt-hour.

6 (8) UNITED STATES PERSON.—The term
 7 “United States person” means—

8 (A) a United States citizen or an alien law-
 9 fully admitted for permanent residence to the
 10 United States; or

11 (B) an entity organized under the laws of
 12 the United States or of any jurisdiction within
 13 the United States, including a foreign branch of
 14 such an entity.

15 **SEC. 7. ADDITIONAL RESOURCES FOR THE OFFICE OF FOR-**
 16 **EIGN ASSETS CONTROL.**

17 There are authorized to be appropriated to the Sec-
 18 retary of the Treasury such sums as may be necessary
 19 to support the targeting by the Office of Foreign Assets
 20 Control of persons under this Act and to enhance the abil-
 21 ity of that Office to target persons for the imposition of
 22 sanctions under the Global Magnitsky Human Rights Ac-
 23 countability Act (subtitle F of title XII of Public Law
 24 114–328; 22 U.S.C. 2656 note).

