

Calendar No. 593

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 110-273

OVERSEAS PRIVATE INVESTMENT CORPORATION
REAUTHORIZATION ACT OF 2008

MARCH 4, 2008.—Ordered to be printed

Mr. BIDEN, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany H.R. 2798]

The Committee on Foreign Relations, having had under consideration the bill (H.R. 2798), to reauthorize the programs of the Overseas Private Investment Corporation, and for other purposes, having considered the same, reports the bill favorably with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose	1
II. Committee Action	1
III. Discussion	2
IV. Cost Estimate	8
V. Evaluation of Regulatory Impact	8
VI. Changes in Existing Law	8

I. PURPOSE

The purpose of H.R. 2798 is to reauthorize the programs of the Overseas Private Investment Corporation.

II. COMMITTEE ACTION

H.R. 2798 was introduced by Representative Brad Sherman on June 20, 2007. It is cosponsored by Representatives Tom Lantos, Ileana Ros-Lehtinen, and Donald Payne. A companion bill, S. 2349, was introduced by Senators Biden and Lugar on November 14, 2007. On February 13, 2008, the committee ordered H.R. 2798 re-

ported favorably by voice vote with an amendment in the nature of a substitute.

III. DISCUSSION

A. Overview

H.R. 2798, the “Overseas Private Investment Corporation Reauthorization Act of 2008” reauthorizes the agency through September 30, 2011. It strengthens the agency’s development mandate and ensures that its activities are consistent with United States foreign policy objectives. The Overseas Private Investment Corporation (OPIC) is an independent agency of the United States established in 1971. OPIC’s mandate is to mobilize and facilitate the participation of the U.S. private sector in the economic and social development of less developed countries, thereby complementing the development assistance objectives of the United States. OPIC provides political risk insurance, project financing, and other financial assistance to U.S. companies in support of these objectives. Over the agency’s 35-year history, OPIC has supported 177 billion dollars’ worth of investments in more than 150 developing countries, helping to create more than 800,000 host-country jobs and generating some \$13 billion in host-government revenues.

B. Summary of major provisions

The legislation includes several important changes to current law: (1) Strengthening the statutory provisions on rights of workers overseas; (2) requiring OPIC to institute a climate change mitigation action plan to increase the Corporation’s support of projects that use and promote the use of clean energy technology and reduce greenhouse gas emissions; (3) ensuring extractive industry projects supported by OPIC conform to standards and principles established by the Extractive Industries Transparency Initiative; (4) strengthening transparency requirements to ensure that the public has sufficient notice and information about potential OPIC-supported projects; and (5) directing OPIC to prepare a report on the feasibility of broadening assistance to projects that support low-income home buyers.

Internationally Recognized Worker Rights (Sec. 3). This section amends section 231A of the Foreign Assistance Act (FAA) of 1961 to require OPIC to take certain measures to strengthen the rights of workers overseas. The committee believes that promoting internationally recognized worker rights is an integral component of U.S. foreign policy, and OPIC’s development mandate requires that it play a role in this effort. The bill directly links workers rights standards in OPIC-supported projects to standards established under the Generalized System of Preferences (GSP) in the Trade Act of 1974 and directs that the Corporation can only provide assistance to prospective applicants if: (1) The country in which the project is to be undertaken is eligible as a GSP beneficiary country and has not been determined to be ineligible for GSP benefits due to its record on worker rights or child labor; or (2) if the country is not eligible as a GSP beneficiary country, the government in the country in which the project is to be undertaken has taken or is taking steps to afford workers in the country internationally recognized worker rights. These amendments will simplify the workers

rights provision in current law for OPIC by specifically linking the standard for most countries to the GSP process. The committee also expects OPIC to carefully review all project applications and consider whether project sponsors have previously committed, or are currently committing, significant violations of internationally recognized worker rights. OPIC should monitor project compliance, and review any complaints related to a project.

“Internationally recognized worker rights” follows the definition provided in section 507(4) of the Trade Act of 1974. The worker rights limitation does not apply to the provision of humanitarian services. The legislation directs OPIC to consider information contained in reports required by this Act and the Trade Act of 1974 as well as other relevant information—including observations, reports and recommendations of the International Labor Organization—when making worker rights determinations for purposes of project eligibility. In addition, the legislation removes a waiver previously granted to the President of the United States allowing the Corporation to support projects “in the national interest” in countries that may fall below established worker rights standards. Finally, the legislation adds an “elimination of discrimination with respect to employment and occupation” clause to the worker rights standard.

Preferential Consideration of Certain Investment Projects (Sec. 4). This section amends section 231(f) of the FAA and requires OPIC, to the greatest degree practicable and consistent with the Corporation’s goals, to provide preferential consideration to investment projects in less developed countries, the governments of which are receptive to private enterprise and are willing and able to maintain conditions that enable private enterprise to make its full contribution to the development process. This does not affect the committee’s longstanding belief that protecting human rights, strengthening the rule of law, and promoting democratic governance by the host government are essential elements toward sustainable long-term development.

Climate Change Mitigation (Sec. 5). This section requires OPIC to institute a climate change mitigation action plan. Climate change is one of the critical issues facing the international community and has especially serious implications for developing countries. The committee believes that agencies such as OPIC, whose mandate is to promote economic and social development in less developed countries, has an important role to play toward mitigating climate change and energy security. The committee commends OPIC for the strong leadership role it has assumed through its greenhouse gas and clean energy initiative, and urges the Corporation to continue to sustain such efforts. To ensure this momentum is not lost, the legislation directs the Corporation to establish benchmark clean energy technology, climate mitigation and greenhouse gas goals. Within 180 days of enactment, the Corporation must institute a plan that will include the following:

First, OPIC shall establish a goal for substantially increasing support of projects that use, develop, or otherwise promote the use of clean energy technology during the 10-year period beginning on the date of enactment of this Act. This should include preferential treatment to evaluating and awarding assistance for projects that

use, develop, or otherwise promote the use of clean energy technologies.

Second, when the agency undertakes environmental impact assessments of potential projects, it shall take into account the degree to which the project contributes to the emission of greenhouse gases. This subsection applies to all projects, not just those classified as “Category A,” and shall not be construed to eliminate any other requirement found elsewhere in law.

Third, the legislation directs OPIC to continue to maintain a goal for reducing direct greenhouse gas emissions associated with projects in the Corporation’s portfolio by 20 percent during the 10-year period beginning on the date of enactment, as well as a goal for limiting annual investment in projects that have significant greenhouse gas emissions in a manner that will help achieve a 20-percent reduction in greenhouse gas emissions over 10 years. The Corporation is directed to maintain a goal based on total aggregate greenhouse gas emissions of all projects in a manner compatible with the findings and actions taken under the United Nations Framework Convention on Climate Change.

The committee includes the following reporting requirements to be included in the Corporation’s annual report: Annual greenhouse gas emissions attributable to each project that has significant greenhouse gas emissions in the Corporation’s active portfolio; estimated greenhouse gas emissions for each new project that has significant greenhouse gas emissions; extent to which the Corporation is meeting its greenhouse gas reduction goals; and a listing of each new project supported by the Corporation that involves renewable energy and environmentally beneficial products and services, including clean energy technology. In submitting its annual report, the “reporting requirements” in this subsection apply to all projects, including those implemented through financial intermediaries.

In this section, “clean technology” refers to a renewable energy supply or end-use technology that, compared over its life cycle to a similar technology already in widespread commercial use within a given country, will reduce emissions of greenhouse gases or decrease energy intensity of operation, substantially lower emissions of air pollutants, or generate substantially smaller and less hazardous quantities of solid and liquid waste. “Clean” end-use technologies include end-use energy efficiency measures that achieve substantial reductions in greenhouse gas emissions. “Clean” end-use technologies do not include HFC–23 abatement projects.

Transparency for Extraction Investments (Sec. 5). The bill creates a new subsection under the climate change mitigation section addressing extraction investments. The committee recognizes the often problematic history of extractive industry projects in developing countries. The committee intends for this legislation to provide important transparency safeguards so that OPIC-sponsored projects can best fulfill the agency’s development mandate. The legislation directs the Corporation to provide notice to Congress not later than 60 days before approval of extractive industry projects, defined as those which are Category A and valued at \$10,000,000 or more.

In general, the Corporation may approve a contract of insurance, reinsurance, a guaranty, or provide financing to an eligible investor

for a project that significantly involves an extractive industry only if: (1) The eligible investor has agreed to implement Extractive Industries Transparency Initiative (EITI) principles and criteria, or substantially similar principles and criteria related to the specific project to be carried out; and (2) the host country where the project is to be carried out has committed to EITI principles and criteria or substantially similar principles and criteria, or the host country is taking the necessary steps to establish functioning systems. Functioning systems include: accurately accounting for revenues and expenditures in connection with extraction; the independent audit of such revenues and expenditures and the widespread public dissemination of the finding of the audit; and verifying government receipts against company payments, including widespread dissemination of such payment information and disclosure of such documents as host government agreements. The legislation includes an exception to the above provision and allows for the Corporation to approve an extractive industry project, even if the host country has not committed to EITI or substantially similar principles and criteria and is not taking the necessary steps to establish functioning accounting, auditing and government receipt verification systems, provided that the host government does not prevent the eligible investor from implementing EITI or substantially similar principles and criteria related to the specific project to be carried out.

“Extractive industry” refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals, forestry or coal. By “substantially similar principles and criteria,” the committee means the general agreement of EITI principles, as well as the adoption of specific criteria, including:

(1) Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas, and mining companies to a wide audience in a publicly accessible, comprehensive, and comprehensible manner;

(2) Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified;

(3) This approach should be extended to all relevant companies including state-owned enterprises; and

(4) Involvement of civil society in the design, monitoring and evaluation of this process and contributes toward public debate.

Finally, this section requires the Corporation, to the extent practicable and consistent with its development objectives, to give preference to projects where both the eligible investor and host country have agreed to implement EITI principles and criteria, or substantially similar principles and criteria.

Increased Transparency (Sec. 6). The committee commends OPIC for its transparency initiative implemented in response to the 2003 reauthorization committee report. This section furthers transparency by amending section 231A(c)(2) of the FAA to require OPIC to provide advance notice and information regarding all

projects considered by the Board of Directors. The committee wants to ensure there is a robust exchange of information and viewpoints prior to Board discussion of potential projects. In the past, public hearings scheduled by OPIC to receive views regarding the activities of the Corporation have been sparsely attended or cancelled due to lack of attendance. The committee believes public input would be enhanced by requiring OPIC to make information available in advance about potential projects to be voted on by the Board of Directors. The legislation is intended to address this information gap and ensure that interested parties are aware in advance about the public hearing date and have sufficient information in which to prepare for such a hearing.

The legislation directs the Corporation to hold a public hearing in order to afford an opportunity for any person to present view regarding the activities of the Corporation. It shall notice such a hearing at least 20 days in advance. To ensure participants are adequately prepared for such a hearing, at least 15 days in advance, the Corporation shall make available a public summary of each project, not including any confidential business information, including information related to workers rights, as well as information related to the project's social and environmental impacts.

The legislation also directs the Corporation to make available to the public the detailed methodology used to assess and monitor the impact of projects supported by the Corporation related to host-country environmental and development impact, project impact toward employment in the United States and the protection of internationally recognized worker rights, as well as the elimination of discrimination with respect to employment and occupation, in host countries.

The legislation furthers additional transparency toward "Category A" projects, which are projects that have a significant adverse environmental impact. "Category A project" means a project or other activity for which the Corporation proposes to provide insurance, reinsurance, a guaranty, financing, or other assistance and which is likely to have a significant adverse environmental impact. OPIC's Board of Directors may not vote in favor of any action proposed to be taken by the Corporation on any Category A project until at least 60 days after the Corporation makes available for public comment a summary of the project and relevant information about the project. Such summaries, which shall not include confidential business information, shall be made available to groups in the area that may be impacted by the proposed project and to NGOs in the host country. To the extent practicable, the Corporation shall publish responses to comments received with respect to a Category A project and submit the responses to the Board not later than 7 days before a vote is to be taken for action on the project.

The committee commends the Corporation for establishing an Office of Accountability. The Corporation shall continue to maintain an Office of Accountability to provide, to the maximum extent practicable, upon request, problem-solving services for projects supported by the Corporation and to review the Corporation's compliance with its environmental, social, internationally recognized worker rights, human rights, and transparency policies and procedures. The committee expects the Office of Accountability to con-

tinue to operate in a manner that is fair, objective, and transparent.

Ineligibility of Persons Doing Certain Business with State Sponsors of Terrorism (Sec. 9). The bill adds a new subsection (m) to Section 239 of the FAA to make ineligible for OPIC assistance persons with certain business activity in or with state sponsors of terrorism. This will ensure that OPIC assistance will not go towards entities, parent companies or affiliates that are engaged in a discouraged transaction with a “state sponsor of terrorism.”

The legislation is meant to strike a balance between concern that the Corporation refrain from directing any support toward entities engaged in a discouraged transaction with a state sponsor of terrorism, while ensuring the Corporation is able to function in an effective and efficient manner and that certification requirements will not have a chilling effect on potential applicants.

The Corporation has provided the committee with assurances that the certification required by this section will require the certifying officer to affirm that they have taken appropriate measures necessary to determine whether their firm and any applicable affiliated entities are engaged in discouraged transactions, and if necessary, has received any information and cooperation from affiliated entities needed to make the certification.

“State sponsor of terrorism” means any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism pursuant to the Export Administration Act of 1979 and the Arms Export Control Act. This does not include Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei, Darfur, if the Corporation, with concurrence of the Secretary of State, determines that providing assistance for projects in such regions will provide emergency relief, promote economic self-sufficiency, or implement a nonmilitary program in support of a viable peace agreement in Sudan.

Consistent with the current policy of the United States, OPIC should not be supporting projects in the HAMAS-controlled Gaza Strip. Should this policy change, OPIC officials have committed to consult closely with the Secretary of State to ensure that any support provided to projects within Gaza is consistent with U.S. policy objectives. In addition, the committee expects the Corporation to consult with Senate Committee on Foreign Relations and the House Committee on Foreign Affairs before approval of assistance to such projects.

Low-Income Housing (Sec. 12). The bill directs OPIC to submit a report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, on the feasibility of broadening assistance to projects that provide support to low-income home buyers. OPIC has a housing initiative with commitments approaching \$1 billion for over 450,000 housing units in projects that afford home ownership opportunities to middle- and low-income residents in developing countries. If such additional assistance is found to be feasible, the committee directs OPIC to identify and begin to implement steps to provide such assistance. The committee notes that there has been an exponential growth in the population of urban areas and an equivalent increase in urban poverty and slum dwellings. In 2007, the number of slum

dwellers crossed the 1 billion mark, and cities of the developing world are projected to absorb 95 percent of urban growth in the next two decades. Therefore, the committee urges the Corporation to focus attention and resources towards this issue by helping to increase access to affordable housing by low-income residents in developing countries.

IV. COST ESTIMATE

At the time of the filing of this report, the cost estimate of this legislation had not yet been provided by the Congressional Budget Office. The chairman will cause the estimate to be printed in the CONGRESSIONAL RECORD when it is provided.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VI. CHANGES IN EXISTING LAW

Pursuant to Rule XXVI, paragraph 12 of the Standing Rules of the Senate, the committee has determined that dispensing with the requirement of this provision of the rules is necessary to expedite the business of the Senate.