II

117TH CONGRESS
2D SESSION

S. 5264

To amend the Bank Holding Company Act of 1956 to prohibit bank holding companies from facilitating fossil fuel production from new sources, or from facilitating transactions that would provide funds for the construction of new or expanded fossil infrastructure that would drive such production, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2022

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

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A BILL

To amend the Bank Holding Company Act of 1956 to prohibit bank holding companies from facilitating fossil fuel production from new sources, or from facilitating transactions that would provide funds for the construction of new or expanded fossil infrastructure that would drive such production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Protecting America’s Economy from the Carbon Bubble Act of 2022’’.

SEC. 2. PROHIBITION ON FACILITATING FOSSIL FUEL PRODUCTION FROM NEW SOURCES.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 15. PROHIBITION ON FACILITATING FOSSIL FUEL PRODUCTION FROM NEW SOURCES.

''(a) DEFINITIONS.—In this section—

''(1) the terms 'exchange', 'issuer', and 'security' have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

''(2) the term 'financial company' means—

''(A) a bank holding company, savings and loan holding company, or similar institution;

''(B) a foreign banking organization or company that is treated as a bank holding company under this Act;

''(C) an insured depository institution, a thrift institution, a savings association, an industrial loan company, or similar institution; or

''(D) any subsidiary, agency, or affiliate of an entity described in subparagraph (A), (B), or (C);

''(3) the term 'fossil fuel' means coal, petroleum, natural gas, or any derivative of coal, petroleum, or natural gas, that is used for fuel, including hydrogen combined with any such derivative;

"(4) the term 'fossil infrastructure' means fossil fuel-related projects, including wells, rail infrastructure, pipelines, terminals, refineries, and power plants;

"(5) the term 'national securities exchange' means an exchange registered as a national securities exchange in accordance with section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

"(6) the term 'new sources' means—

"(A) any production in excess of proven developed producing reserves of fossil fuels, as of the date of enactment of this section; or

"(B) new or expanded fossil infrastructure that would facilitate the production described in subparagraph (A);

"(7) the term 'production' means extractive or production activities that result in fossil fuels being made available for refining or use; and

"(8) the term 'publicly traded entity' means an issuer, the securities of which are listed on a national securities exchange.

"(b) PROHIBITION.—No financial company may facilitate production, including by—

"(1) making loans to, making investments in, or otherwise engaging in any activity that is financial in nature, or incidental to such financial activity, with a fossil fuel company;

"(2) making loans to, making investments in, or otherwise engaging in any activity that is financial in nature, or incidental to such financial activity, for a fossil fuel project;

"(3) taking compensation to arrange, or facilitate a transaction that provides funds for, production with respect to new sources;

"(4) securitizing assets that provide funds for production with respect to new sources;

"(5) entering into a derivatives transaction designed to provide funding for, facilitate, or hedge risks from production with respect to new sources;

"(6) engaging in any activity that is complementary to a financial activity involving production with respect to new sources, including financing the international trade of production with respect to new sources; or

"(7) engaging in any other form of activity defined by regulators or supervisors of the financial company.

"(c) COMPLIANCE PROGRAM.—

"(1) IN GENERAL.—Each financial company shall maintain policies and procedures reasonably designed to ensure that relationships with customers or counterparties do not facilitate production with respect to new sources.

"(2) ATTESTATION.—The chief executive officer of each financial company shall comply with an attestation for compliance with this section, subject to such rules as the Board may prescribe that shall be no less strict than those set forth under section 351.20(c) of title 12, Code of Federal Regulations, or any successor regulation.

"(3) SUPERVISION.—The appropriate Federal banking agency shall supervise the policies and procedures described in this subsection and the implementation of those policies and procedures.

"(d) PENALTIES.—

"(1) CRIMINAL PENALTY.—

"(A) IN GENERAL.—Whoever knowingly violates any provision of this section or, being a company, violates any regulation or order issued by the Board under this section, shall be imprisoned not more than 1 year, fined not more than $1,000,000 per day for each day during which the violation continues, or both.

"(B) INTENT TO DECEIVE, DEFRAUD, OR PROFIT.—Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this section shall be imprisoned not more than 5 years, fined not more than $5,000,000 per day for each day during which the violation continues, or both.

"(2) PROHIBITION ON EMPLOYMENT.—Any individual who knowingly violates any provision of this section shall be banned from future employment with any bank holding company or issuer or publicly traded entity.

"(3) CIVIL MONETARY PENALTY.—Any financial company that violates, and any individual who participates in a violation of, any provision of this section, or any regulation or order issued under this section, shall forfeit all revenues associated with such a violation and pay an additional civil penalty of not more than $25,000 for each day during which the violation continues.".

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