

110TH CONGRESS
2D SESSION

H. R. 6066

To require, for the benefit of shareholders, the disclosure of payments to foreign governments for the extraction of natural resources, to allow such shareholders more appropriately to determine associated risks.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2008

Mr. FRANK of Massachusetts (for himself, Ms. MOORE of Wisconsin, Mr. WATT, and Mr. HASTINGS of Florida) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To require, for the benefit of shareholders, the disclosure of payments to foreign governments for the extraction of natural resources, to allow such shareholders more appropriately to determine associated risks.

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 “Extractive Industries
5 Transparency Disclosure Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Each year corporations pay billions of dol-
2 lars to foreign governments and their affiliates for
3 natural resources, such as oil, gas, coal, copper, dia-
4 monds, and other extracted minerals.

5 (2) Developing countries that derive a signifi-
6 cant portion of their revenues from natural resource
7 extraction tend to have higher poverty rates, weaker
8 governance, higher rates of conflict, and poorer de-
9 velopment records than those countries that do not
10 rely on resource revenues. Since revenues derived
11 from natural resource extraction are often a singular
12 opportunity for some developing countries to struc-
13 ture programs and institutions to broaden the collec-
14 tive and individual wealth of their citizens, it is im-
15 perative that the uses of such funds are closely mon-
16 itored.

17 (3) There is a growing consensus among oil,
18 gas, and mining companies that transparency is
19 good for business, since it improves the business cli-
20 mate in which they work and fosters good govern-
21 ance and accountability.

22 (4) Transparency benefits shareholders because
23 of their desire to know the amount of such payments
24 in order to assess financial risk, compare payments
25 from country to country, and assess whether such

1 payments help to create a more stable investment
 2 climate; moreover, undisclosed payments may be per-
 3 ceived as corrupt and to the detriment of the image
 4 of the corporation.

5 (5) It is in the United States best interest to
 6 promote transparency, since transparency contrib-
 7 utes to a better investment climate, a more stable
 8 commodity supply, and greater energy security.

9 **SEC. 3. ADDITIONAL ANNUAL REPORT DISCLOSURES RE-**
 10 **QUIRED.**

11 (a) AMENDMENT.—Section 13 of the Securities Ex-
 12 change Act of 1934 (15 U.S.C. 78m) is amended by add-
 13 ing at the end the following new subsection:

14 “(m) DISCLOSURE OF PAYMENT FOR RESOURCE EX-
 15 TRACTION.—

16 “(1) DISCLOSURES REQUIRED.—The Commis-
 17 sion shall modify the rules prescribed under sub-
 18 section (b) of this section to require that each issuer
 19 required file an annual report with the Commission
 20 shall disclose in such report the total amounts, for
 21 each foreign country and for each category of pay-
 22 ment for each foreign country, of any and all pay-
 23 ments made, directly or indirectly, by the issuer or
 24 any of its subsidiaries, to an agency or instrumen-
 25 tality of a foreign government—

1 “(A) for natural resources in a foreign
2 country; or

3 “(B) in any connection with the extraction
4 of natural resources from a foreign country.

5 “(2) DEFINITIONS.—For purposes of this sub-
6 section:

7 “(A) AGENCY OR INSTRUMENTALITY OF A
8 FOREIGN GOVERNMENT.—The term ‘agency or
9 instrumentality of a foreign government’
10 means—

11 “(i) a foreign government;

12 “(ii) a department, ministry, agency,
13 office, officer, employee, legislator, rep-
14 resentative, subdivision, or agent of a for-
15 eign government;

16 “(iii) a person that is directly or indi-
17 rectly owned, controlled or employed by
18 one or more of the persons or entities de-
19 scribed in clause (i) or (ii);

20 “(iv) an account, trust, or other de-
21 vice held for the benefit of any of the per-
22 sons or entities described in clause (i), (ii),
23 or (iii); or

1 “(v) an entity controlled by the state,
2 such as a state-owned oil company, and its
3 agents.

4 “(B) CATEGORY OF PAYMENT.—The term
5 ‘category of payment’, for any payment or
6 transfer, means the one of the clauses (i)
7 through (viii) of subparagraph (G) that most
8 closely describes such payment or transfer.

9 “(C) EXTRACTION.—The term ‘extraction’
10 means any one or more of the following:

11 “(i) the search for any natural re-
12 source, in its natural deposits and original
13 locations;

14 “(ii) the acquisition of property
15 rights, licenses, or properties for the pur-
16 pose of further exploration or for the pur-
17 pose of removing any natural resource
18 from existing deposits on those properties,
19 or both;

20 “(iii) the construction, drilling, and
21 production activities necessary to retrieve
22 any natural resource from its natural de-
23 posit, and the acquisition, construction, in-
24 stallation, and maintenance of field gath-
25 ering and storage systems, including lifting

1 any other natural resource to the surface
2 and gathering, treating, field processing
3 and field storage;

4 “(iv) the transportation of any nat-
5 ural resource through the territory of any
6 foreign country by any means;

7 “(v) the export of any natural re-
8 source from an intermediary country; or

9 “(vi) the acquisition of any conces-
10 sion, permission, permit, right, or other
11 authorization from a foreign government
12 necessary or desirable to conduct any of
13 the activities described in the preceding
14 clauses of this subparagraph.

15 “(D) FOREIGN COUNTRY.—The term ‘for-
16 eign country’ means any country other than the
17 United States.

18 “(E) FOREIGN GOVERNMENT.—The term
19 ‘foreign government’ means the government of
20 any foreign country.

21 “(F) NATURAL RESOURCES.—The term
22 ‘natural resources’ means—

23 “(i) oil and gas reserves, metal ores,
24 gemstones, industrial materials, coal; and

1 “(ii) any other commodity of commer-
2 cial value produced by the extraction of
3 natural resources, in its natural or refined
4 state, that the Securities and Exchange
5 Commission shall by regulation determine
6 should be subject to the reporting require-
7 ments of this subsection in order to carry
8 out the purposes of this subsection due to
9 the significance of the amounts being paid
10 therefore by one or more issuers.

11 “(G) PAYMENTS.—The term ‘payments’
12 means any transfer or payment of any kind, ei-
13 ther direct or indirect, and irrespective of the
14 amount, and in any form whatsoever, includ-
15 ing—

16 “(i) host government’s production en-
17 titlements;

18 “(ii) national state-owned company
19 production entitlements;

20 “(iii) profits taxes;

21 “(iv) royalties;

22 “(v) dividends;

23 “(vi) bonuses (such as signature, dis-
24 covery, or production bonuses);

1 “(vii) license fees, rental fees, entry
2 fees, and other considerations for licenses
3 or concessions; and

4 “(viii) other benefits to the foreign
5 government or the agency or instrumen-
6 tality of the foreign government that have
7 a value of not less than \$100,000.”.

8 (b) DEADLINE.—The Securities and Exchange Com-
9 mission shall prescribe the modifications to its rules re-
10 quired by section 13(m) of the Securities Exchange Act
11 of 1934 (as added by the amendment made by subsection
12 (a) of this section) within 90 days of the date of enactment
13 of this Act, and shall make such modifications effective
14 with respect to the annual reports of issuers with respect
15 to the fiscal years of issuers ending on or after January
16 1, 2009.

17 (c) PUBLIC AVAILABILITY OF INFORMATION.—The
18 Securities and Exchange Commission shall, by rule or reg-
19 ulation, provide that the information filed by all issuers
20 pursuant to such section 13(m) be compiled so that it is
21 accessible by the public directly, and in a compiled format,
22 from the website of the Commission without separately ac-
23 cessing on the EDGAR system the annual reports of each
24 issuer filing such information.

○