

Calendar No. 743

110TH CONGRESS
2D SESSION

S. 3044

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2008

Mr. REID (for himself, Mrs. BOXER, Mr. BROWN, Mr. CARDIN, Mr. CONRAD, Mr. DODD, Mr. DURBIN, Mr. JOHNSON, Mr. KENNEDY, Ms. KLOBUCHAR, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mrs. McCASKILL, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. SCHUMER, Ms. STABENOW, and Mr. WHITEHOUSE) introduced the following bill; which was read the first time

MAY 21, 2008

Read the second time and placed on the calendar

A BILL

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Consumer-First Energy Act of 2008”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—TAX PROVISIONS RELATED TO OIL AND GAS

Sec. 101. Denial of deduction for major integrated oil companies for income attributable to domestic production of oil, gas, or primary products thereof.

Sec. 102. Elimination of the different treatment of foreign oil and gas extraction income and foreign oil related income for purposes of the foreign tax credit.

Sec. 103. Windfall profits tax.

Sec. 104. Energy Independence and Security Trust Fund.

TITLE II—PRICE GOUGING

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Energy emergency and additional price gouging enforcement.

Sec. 204. Presidential declaration of energy emergency.

Sec. 205. Enforcement by the Federal Trade Commission.

Sec. 206. Enforcement by State attorneys general.

Sec. 207. Penalties.

Sec. 208. Effect on other laws.

TITLE III—STRATEGIC PETROLEUM RESERVE

Sec. 301. Suspension of petroleum acquisition for Strategic Petroleum Reserve.

TITLE IV—NO OIL PRODUCING AND EXPORTING CARTELS

Sec. 401. No Oil Producing and Exporting Cartels Act of 2008.

TITLE V—MARKET SPECULATION

Sec. 501. Speculative limits and transparency for off-shore oil trading.

Sec. 502. Margin level for crude oil.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) excessive prices for petroleum products have
9 created, or imminently threaten to create, severe

1 economic dislocations and hardships, including the
2 loss of jobs, business failures, disruption of economic
3 activity, curtailment of vital public services, and
4 price increases throughout the economy;

5 (2) those hardships and dislocations jeopardize
6 the normal flow of commerce and constitute a na-
7 tional energy and economic crisis that is a threat to
8 the public health, safety, and welfare of the United
9 States;

10 (3) consumers, workers, small businesses, and
11 large businesses of the United States are particu-
12 larly vulnerable to those price increase due to the
13 failure of the President to aggressively develop alter-
14 natives to petroleum and petroleum products and to
15 promote efficiency and conservation;

16 (4) reliable and affordable supplies of crude oil
17 and products refined from crude oil (including gaso-
18 line, diesel fuel, heating oil, and jet fuel) are vital to
19 the economic and national security of the United
20 States given current energy infrastructure and tech-
21 nology;

22 (5) the price of crude oil and products refined
23 from crude oil (including gasoline, diesel fuel, heat-
24 ing oil, and jet fuel) have skyrocketed to record lev-
25 els and are continuing to rise;

1 (6) since 2001, oil prices have increased from
2 \$29 per barrel to levels near \$120 per barrel and
3 gasoline prices have more than doubled from \$1.47
4 per gallon to more than \$3.50 per gallon;

5 (7) the record prices for crude oil and products
6 refined from crude oil (including gasoline, diesel
7 fuel, heating oil, and jet fuel)—

8 (A) are hurting millions of consumers,
9 workers, small businesses, and large businesses
10 of the United States, and threaten long-term
11 damage to the economy and security of the
12 United States;

13 (B) are partially due to—

14 (i) the declining value of the dollar
15 and a widespread lack of confidence in the
16 management of economic and foreign pol-
17 icy by the President;

18 (ii) the accumulation of national debt
19 and growing budget deficits under the
20 failed economic policies of the President;
21 and

22 (iii) high levels of military expendi-
23 tures under the failed policies of the Presi-
24 dent in Iraq; and

1 (C) are no longer justified by traditional
2 forces of supply and demand;

3 (8) rampant speculation in the markets for
4 crude oil and products refined from crude oil has
5 magnified the price increases and market volatility
6 resulting from those underlying causes of price in-
7 creases; and

8 (9) Congress must take urgent action to protect
9 consumers, workers, and businesses of the United
10 States from rampant speculation in the energy mar-
11 kets and the price increases resulting from the failed
12 domestic and foreign policies of the President.

13 **TITLE I—TAX PROVISIONS** 14 **RELATED TO OIL AND GAS**

15 **SEC. 101. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED** 16 **OIL COMPANIES FOR INCOME ATTRIBUTABLE** 17 **TO DOMESTIC PRODUCTION OF OIL, GAS, OR** 18 **PRIMARY PRODUCTS THEREOF.**

19 (a) IN GENERAL.—Subparagraph (B) of section
20 199(c)(4) (relating to exceptions) is amended by striking
21 “or” at the end of clause (ii), by striking the period at
22 the end of clause (iii) and inserting “, or”, and by insert-
23 ing after clause (iii) the following new clause:

24 “(iv) in the case of any major inte-
25 grated oil company (as defined in section

1 167(h)(5)(B)), the production, refining,
 2 processing, transportation, or distribution
 3 of oil, gas, or any primary product thereof
 4 during any taxable year described in sec-
 5 tion 167(h)(5)(B).”.

6 (b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is
 7 amended by adding at the end the following flush sen-
 8 tence:

9 “For purposes of clause (iv), the term ‘primary
 10 product’ has the same meaning as when used in
 11 section 927(a)(2)(C), as in effect before its re-
 12 peal.”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2008.

16 **SEC. 102. ELIMINATION OF THE DIFFERENT TREATMENT**
 17 **OF FOREIGN OIL AND GAS EXTRACTION IN-**
 18 **COME AND FOREIGN OIL RELATED INCOME**
 19 **FOR PURPOSES OF THE FOREIGN TAX CRED-**
 20 **IT.**

21 (a) IN GENERAL.—Subsections (a) and (b) of section
 22 907 of the Internal Revenue Code of 1986 (relating to
 23 special rules in case of foreign oil and gas income) are
 24 amended to read as follows:

1 “(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN
 2 TAX UNDER SECTION 901.—In applying section 901, the
 3 amount of any foreign oil and gas taxes paid or accrued
 4 (or deemed to have been paid) during the taxable year
 5 which would (but for this subsection) be taken into ac-
 6 count for purposes of section 901 shall be reduced by the
 7 amount (if any) by which the amount of such taxes ex-
 8 ceeds the product of—

9 “(1) the amount of the combined foreign oil
 10 and gas income for the taxable year,

11 “(2) multiplied by—

12 “(A) in the case of a corporation, the per-
 13 centage which is equal to the highest rate of tax
 14 specified under section 11(b), or

15 “(B) in the case of an individual, a frac-
 16 tion the numerator of which is the tax against
 17 which the credit under section 901(a) is taken
 18 and the denominator of which is the taxpayer’s
 19 entire taxable income.

20 “(b) COMBINED FOREIGN OIL AND GAS INCOME;
 21 FOREIGN OIL AND GAS TAXES.—For purposes of this sec-
 22 tion—

23 “(1) COMBINED FOREIGN OIL AND GAS IN-
 24 COME.—The term ‘combined foreign oil and gas in-

1 come’ means, with respect to any taxable year, the
2 sum of—

3 “(A) foreign oil and gas extraction income,
4 and
5 “(B) foreign oil related income.

6 “(2) FOREIGN OIL AND GAS TAXES.—The term
7 ‘foreign oil and gas taxes’ means, with respect to
8 any taxable year, the sum of—

9 “(A) oil and gas extraction taxes, and

10 “(B) any income, war profits, and excess
11 profits taxes paid or accrued (or deemed to
12 have been paid or accrued under section 902 or
13 960) during the taxable year with respect to
14 foreign oil related income (determined without
15 regard to subsection (c)(4)) or loss which would
16 be taken into account for purposes of section
17 901 without regard to this section.”.

18 (b) RECAPTURE OF FOREIGN OIL AND GAS
19 LOSSES.—Paragraph (4) of section 907(c) of the Internal
20 Revenue Code of 1986 (relating to recapture of foreign
21 oil and gas extraction losses by recharacterizing later ex-
22 traction income) is amended to read as follows:

23 “(4) RECAPTURE OF FOREIGN OIL AND GAS
24 LOSSES BY RECHARACTERIZING LATER COMBINED
25 FOREIGN OIL AND GAS INCOME.—

“(A) IN GENERAL.—The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

“(i) first by the amount determined under subparagraph (B), and

“(ii) then by the amount determined under subparagraph (C).

The aggregate amount of such reductions shall be treated as income (from sources without the United States) which is not combined foreign oil and gas income.

“(B) REDUCTION FOR PRE-2008 FOREIGN OIL EXTRACTION LOSSES.—The reduction under this paragraph shall be equal to the lesser of—

“(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

“(ii) the excess of—

“(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after Decem-

ber 31, 1982, and before January 1,
2008, over

“(II) so much of such aggregate
amount as was recharacterized under
this paragraph (as in effect before
and after the date of the enactment of
the Consumer-First Energy Act of
2008) for preceding taxable years be-
ginning after December 31, 1982.

“(C) REDUCTION FOR POST-2008 FOREIGN
OIL AND GAS LOSSES.—The reduction under
this paragraph shall be equal to the lesser of—

“(i) the combined foreign oil and gas
income of the taxpayer for the taxable year
(determined without regard to this para-
graph), reduced by an amount equal to the
reduction under subparagraph (A) for the
taxable year, or

“(ii) the excess of—

“(I) the aggregate amount of for-
eign oil and gas losses for preceding
taxable years beginning after Decem-
ber 31, 2008, over

“(II) so much of such aggregate
amount as was recharacterized under

1 this paragraph for preceding taxable
2 years beginning after December 31,
3 2008.

4 “(D) FOREIGN OIL AND GAS LOSS DE-
5 FINED.—

6 “(i) IN GENERAL.—For purposes of
7 this paragraph, the term ‘foreign oil and
8 gas loss’ means the amount by which—

9 “(I) the gross income for the tax-
10 able year from sources without the
11 United States and its possessions
12 (whether or not the taxpayer chooses
13 the benefits of this subpart for such
14 taxable year) taken into account in
15 determining the combined foreign oil
16 and gas income for such year, is ex-
17 ceeded by

18 “(II) the sum of the deductions
19 properly apportioned or allocated
20 thereto.

21 “(ii) NET OPERATING LOSS DEDUC-
22 TION NOT TAKEN INTO ACCOUNT.—For
23 purposes of clause (i), the net operating
24 loss deduction allowable for the taxable

1 year under section 172(a) shall not be
2 taken into account.

3 “(iii) EXPROPRIATION AND CASUALTY
4 LOSSES NOT TAKEN INTO ACCOUNT.—For
5 purposes of clause (i), there shall not be
6 taken into account—

7 “(I) any foreign expropriation
8 loss (as defined in section 172(h) (as
9 in effect on the day before the date of
10 the enactment of the Revenue Rec-
11 onciliation Act of 1990)) for the tax-
12 able year, or

13 “(II) any loss for the taxable
14 year which arises from fire, storm,
15 shipwreck, or other casualty, or from
16 theft,

17 to the extent such loss is not compensated
18 for by insurance or otherwise.

19 “(iv) FOREIGN OIL EXTRACTION
20 LOSS.—For purposes of subparagraph
21 (B)(ii)(I), foreign oil extraction losses shall
22 be determined under this paragraph as in
23 effect on the day before the date of the en-
24 actment of the Consumer-First Energy Act
25 of 2008.”.

1 (c) CARRYBACK AND CARRYOVER OF DISALLOWED
 2 CREDITS.—Section 907(f) of the Internal Revenue Code
 3 of 1986 (relating to carryback and carryover of disallowed
 4 credits) is amended—

5 (1) by striking “oil and gas extraction taxes”
 6 each place it appears and inserting “foreign oil and
 7 gas taxes”, and

8 (2) by adding at the end the following new
 9 paragraph:

10 “(4) TRANSITION RULES FOR PRE-2009 AND
 11 2009 DISALLOWED CREDITS.—

12 “(A) PRE-2009 CREDITS.—In the case of
 13 any unused credit year beginning before Janu-
 14 ary 1, 2009, this subsection shall be applied to
 15 any unused oil and gas extraction taxes carried
 16 from such unused credit year to a year begin-
 17 ning after December 31, 2008—

18 “(i) by substituting ‘oil and gas ex-
 19 traction taxes’ for ‘foreign oil and gas
 20 taxes’ each place it appears in paragraphs
 21 (1), (2), and (3), and

22 “(ii) by computing, for purposes of
 23 paragraph (2)(A), the limitation under
 24 subparagraph (A) for the year to which
 25 such taxes are carried by substituting ‘for-

1 eign oil and gas extraction income’ for ‘for-
2 eign oil and gas income’ in subsection (a).

3 “(B) 2009 CREDITS.—In the case of any
4 unused credit year beginning in 2009, the
5 amendments made to this subsection by the
6 Consumer-First Energy Act of 2008 shall be
7 treated as being in effect for any preceding year
8 beginning before January 1, 2009, solely for
9 purposes of determining how much of the un-
10 used foreign oil and gas taxes for such unused
11 credit year may be deemed paid or accrued in
12 such preceding year.”.

13 (d) CONFORMING AMENDMENT.—Section 6501(i) of
14 the Internal Revenue Code of 1986 is amended by striking
15 “oil and gas extraction taxes” and inserting “foreign oil
16 and gas taxes”.

17 (e) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2008.

20 **SEC. 103. WINDFALL PROFITS TAX.**

21 (a) IN GENERAL.—Subtitle E of the Internal Rev-
22 enue Code of 1986 (relating to alcohol, tobacco, and cer-
23 tain other excise taxes) is amended by adding at the end
24 thereof the following new chapter:

1 **“CHAPTER 56—WINDFALL PROFITS ON**
 2 **CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; qualified investment.

“Sec. 5898. Special rules and definitions.

3 **“SEC. 5896. IMPOSITION OF TAX.**

4 “(a) IN GENERAL.—In addition to any other tax im-
 5 posed under this title, there is hereby imposed on any ap-
 6 plicable taxpayer an excise tax in an amount equal to 25
 7 percent of the excess of—

8 “(1) the windfall profit of such taxpayer, over

9 “(2) the excess of—

10 “(A) the amount of the qualified invest-
 11 ments of such applicable taxpayer for such tax-
 12 able year, over

13 “(B) the average of the qualified invest-
 14 ment of such applicable taxpayer for taxable
 15 years beginning during the 2002–2006 taxable
 16 year period.

17 “(b) APPLICABLE TAXPAYER.—For purposes of this
 18 chapter, the term ‘applicable taxpayer’ means any major
 19 integrated oil company (as defined in section
 20 167(h)(5)(B)).

21 **“SEC. 5897. WINDFALL PROFIT; QUALIFIED INVESTMENT.**

22 “(a) GENERAL RULE.—For purposes of this chapter,
 23 the term ‘windfall profit’ means the excess of the adjusted
 24 taxable income of the applicable taxpayer for the taxable

1 year over the reasonably inflated average profit for such
2 taxable year.

3 “(b) ADJUSTED TAXABLE INCOME.—For purposes of
4 this chapter, with respect to any applicable taxpayer, the
5 adjusted taxable income for any taxable year is equal to
6 the taxable income for such taxable year (within the mean-
7 ing of section 63 and determined without regard to this
8 subsection)—

9 “(1) increased by any interest expense deduc-
10 tion, charitable contribution deduction, and any net
11 operating loss deduction carried forward from any
12 prior taxable year, and

13 “(2) reduced by any interest income, dividend
14 income, and net operating losses to the extent such
15 losses exceed taxable income for the taxable year.

16 In the case of any applicable taxpayer which is a foreign
17 corporation, the adjusted taxable income shall be deter-
18 mined with respect to such income which is effectively con-
19 nected with the conduct of a trade or business in the
20 United States.

21 “(c) REASONABLY INFLATED AVERAGE PROFIT.—
22 For purposes of this chapter, with respect to any applica-
23 ble taxpayer, the reasonably inflated average profit for any
24 taxable year is an amount equal to the average of the ad-
25 justed taxable income of such taxpayer for taxable years

1 beginning during the 2002–2006 taxable year period (de-
 2 termined without regard to the taxable year with the high-
 3 est adjusted taxable income in such period) plus 10 per-
 4 cent of such average.

5 “(d) QUALIFIED INVESTMENT.—For purposes of this
 6 chapter, the term ‘qualified investment’ means, with re-
 7 spect to any applicable taxpayer, means any amount paid
 8 or incurred with respect to—

9 “(1) any qualified facility described in para-
 10 graph (1), (2), (3), (4), (5), (6), (7), or (9) of sec-
 11 tion 45(d) (determined without regard to any placed
 12 in service date), or

13 “(2) any facility for the production renewable
 14 fuel or advanced biofuel (as defined in section
 15 211(o) of the Clean Air Act 942 U.S.C. 7545).

16 **“SEC. 5898. SPECIAL RULES AND DEFINITIONS.**

17 “(a) WITHHOLDING AND DEPOSIT OF TAX.—The
 18 Secretary shall provide such rules as are necessary for the
 19 withholding and deposit of the tax imposed under section
 20 5896.

21 “(b) RECORDS AND INFORMATION.—Each taxpayer
 22 liable for tax under section 5896 shall keep such records,
 23 make such returns, and furnish such information as the
 24 Secretary may by regulations prescribe.

1 “(c) RETURN OF WINDFALL PROFIT TAX.—The Sec-
2 retary shall provide for the filing and the time of such
3 filing of the return of the tax imposed under section 5896.

4 “(d) CRUDE OIL.—The term ‘crude oil’ includes
5 crude oil condensates and natural gasoline.

6 “(e) BUSINESSES UNDER COMMON CONTROL.—For
7 purposes of this chapter, all members of the same con-
8 trolled group of corporations (within the meaning of sec-
9 tion 267(f)) and all persons under common control (within
10 the meaning of section 52(b) but determined by treating
11 an interest of more than 50 percent as a controlling inter-
12 est) shall be treated as 1 person.

13 “(f) REGULATIONS.—The Secretary shall prescribe
14 such regulations as may be necessary or appropriate to
15 carry out the purposes of this chapter.”.

16 (b) CLERICAL AMENDMENT.—The table of chapters
17 for subtitle E of the Internal Revenue Code of 1986 is
18 amended by adding at the end the following new item:

“CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL.”.

19 (c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—
20 The first sentence of section 164(a) of the Internal Rev-
21 enue Code of 1986 (relating to deduction for taxes) is
22 amended by inserting after paragraph (5) the following
23 new paragraph:

24 “(6) The windfall profit tax imposed by section
25 5896.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2007.

4 **SEC. 104. ENERGY INDEPENDENCE AND SECURITY TRUST**
 5 **FUND.**

6 (a) ESTABLISHMENT.—Subchapter A of chapter 98
 7 of the Internal Revenue Code of 1986 (relating to trust
 8 fund code) is amended by adding at the end the following
 9 new section:

10 **“SEC. 9511. ENERGY INDEPENDENCE AND SECURITY TRUST**
 11 **FUND.**

12 “(a) CREATION OF TRUST FUND.—There is estab-
 13 lished in the Treasury of the United States a trust fund
 14 to be known as ‘Energy Independence and Security Trust
 15 Fund’ (referred to in this section as the ‘Trust Fund’),
 16 consisting of such amounts as may be appropriated or
 17 credited to the Trust Fund as provided in this section or
 18 section 9602(b).

19 “(b) TRANSFERS TO TRUST FUND.—There is hereby
 20 appropriated to the Trust Fund an amount equivalent to
 21 the increase in the revenues received in the Treasury as
 22 the result of the amendments made by sections 101, 102,
 23 and 103 of the Consumer-First Energy Act of 2008.

24 “(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—
 25 Amounts in the Trust Fund shall be available, as provided

1 by appropriation Acts, for the purposes of reducing the
 2 dependence of the United States on foreign and
 3 unsustainable energy sources and reducing the risks of
 4 global warming through programs and measures that—

5 “(1) reduce the burdens on consumers of rising
 6 energy prices;

7 “(2) diversify and expand the use of secure, ef-
 8 ficient, and environmentally-friendly energy supplies
 9 and technologies;

10 “(3) result in net reductions in emissions of
 11 greenhouse gases; and

12 “(4) prevent energy price gouging, profiteering,
 13 and market manipulation.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for subchapter A of chapter 98 of such Code is amended
 16 by adding at the end the following new item:

“Sec. 9511. Energy Independence and Security Trust Fund.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall take effect on the date of the enactment
 19 of this Act.

20 **TITLE II—PRICE GOUGING**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as the “Petroleum Consumer
 23 Price Gouging Protection Act”.

24 **SEC. 202. DEFINITIONS.**

25 In this title:

1 (1) AFFECTED AREA.—The term “affected
2 area” means an area covered by a Presidential dec-
3 laration of energy emergency.

4 (2) SUPPLIER.—The term “supplier” means
5 any person engaged in the trade or business of sell-
6 ing or reselling, at retail or wholesale, or distributing
7 crude oil, gasoline, petroleum distillates, or biofuel.

8 (3) PRICE GOUGING.—The term “price
9 gouging” means the charging of an unconscionably
10 excessive price by a supplier in an affected area.

11 (4) UNCONSCIONABLY EXCESSIVE PRICE.—The
12 term “unconscionably excessive price” means an av-
13 erage price charged during an energy emergency de-
14 clared by the President in an area and for a product
15 subject to the declaration, that—

16 (A)(i)(I) constitutes a gross disparity from
17 the average price at which it was offered for
18 sale in the usual course of the supplier’s busi-
19 ness during the 30 days prior to the President’s
20 declaration of an energy emergency; and

21 (II) grossly exceeds the prices at which the
22 same or similar crude oil, gasoline, petroleum
23 distillates, or biofuel was readily obtainable by
24 purchasers from other suppliers in the same rel-

1 evant geographic market within the affected
2 area; or

3 (ii) represents an exercise of unfair lever-
4 age or unconscionable means on the part of the
5 supplier, during a period of declared energy
6 emergency; and

7 (B) is not attributable to increased whole-
8 sale or operational costs, including replacement
9 costs, outside the control of the supplier, in-
10 curred in connection with the sale of crude oil,
11 gasoline, petroleum distillates, or biofuel, and is
12 not attributable to local, regional, national, or
13 international market conditions.

14 (5) COMMISSION.—The term “Commission”
15 means the Federal Trade Commission.

16 **SEC. 203. ENERGY EMERGENCY AND ADDITIONAL PRICE**
17 **GOUGING ENFORCEMENT.**

18 (a) IN GENERAL.—During any energy emergency de-
19 clared by the President under section 204 of this title, it
20 is unlawful for any supplier to sell, or offer to sell crude
21 oil, gasoline, petroleum distillates, or biofuel subject to
22 that declaration in, or for use in, the area to which that
23 declaration applies at an unconscionably excessive price.

1 (b) FACTORS CONSIDERED.—In determining whether
 2 a violation of subsection (a) has occurred, there shall be
 3 taken into account, among other factors, whether—

4 (1) the price charged was a price that would
 5 reasonably exist in a competitive and freely func-
 6 tioning market; and

7 (2) the amount of gasoline, other petroleum dis-
 8 tillates, or biofuel the seller produced, distributed, or
 9 sold during the period the Proclamation was in ef-
 10 fect increased over the average amount during the
 11 preceding 30 days.

12 **SEC. 204. PRESIDENTIAL DECLARATION OF ENERGY EMER-**
 13 **GENCY.**

14 (a) IN GENERAL.—If the President finds that the
 15 health, safety, welfare, or economic well-being of the citi-
 16 zens of the United States is at risk because of a shortage
 17 or imminent shortage of adequate supplies of crude oil,
 18 gasoline, petroleum distillates, or biofuel due to a disrup-
 19 tion in the national distribution system for crude oil, gaso-
 20 line, petroleum distillates, or biofuel (including such a
 21 shortage related to a major disaster (as defined in section
 22 102(2) of the Robert T. Stafford Disaster Relief and
 23 Emergency Assistance Act (42 U.S.C. 5122(2))), or sig-
 24 nificant pricing anomalies in national energy markets for
 25 crude oil, gasoline, petroleum distillates, or biofuel the

1 President may declare that a Federal energy emergency
2 exists.

3 (b) SCOPE AND DURATION.—The emergency declara-
4 tion shall specify—

5 (1) the period, not to exceed 30 days, for which
6 the declaration applies;

7 (2) the circumstance or condition necessitating
8 the declaration;

9 (3) the area or region to which it applies which
10 may not be limited to a single State; and

11 (4) the product or products to which it applies.

12 (c) EXTENSIONS.—The President may—

13 (1) extend a declaration under subsection (a)
14 for a period of not more than 30 days;

15 (2) extend such a declaration more than once;
16 and

17 (3) discontinue such a declaration before its ex-
18 piration.

19 **SEC. 205. ENFORCEMENT BY THE FEDERAL TRADE COM-**
20 **MISSION.**

21 (a) ENFORCEMENT.—This title shall be enforced by
22 the Federal Trade Commission in the same manner, by
23 the same means, and with the same jurisdiction as though
24 all applicable terms of the Federal Trade Commission Act
25 were incorporated into and made a part of this title. In

1 enforcing section 203 of this title, the Commission shall
 2 give priority to enforcement actions concerning companies
 3 with total United States wholesale or retail sales of crude
 4 oil, gasoline, petroleum distillates, and biofuel in excess
 5 of \$500,000,000 per year but shall not exclude enforce-
 6 ment actions against companies with total United States
 7 wholesale sales of \$500,000,000 or less per year.

8 (b) VIOLATION IS TREATED AS UNFAIR OR DECEP-
 9 TIVE ACT OR PRACTICE.—The violation of any provision
 10 of this title shall be treated as an unfair or deceptive act
 11 or practice proscribed under a rule issued under section
 12 18(a)(1)(B) of the Federal Trade Commission Act (15
 13 U.S.C. 57a(a)(1)(B)).

14 (c) COMMISSION ACTIONS.—Following the declara-
 15 tion of an energy emergency by the President under sec-
 16 tion 204 of this title, the Commission shall—

17 (1) maintain within the Commission—

18 (A) a toll-free hotline that a consumer may
 19 call to report an incident of price gouging in the
 20 affected area; and

21 (B) a program to develop and distribute to
 22 the public informational materials to assist resi-
 23 dents of the affected area in detecting, avoid-
 24 ing, and reporting price gouging;

1 (2) consult with the Attorney General, the
2 United States Attorney for the districts in which a
3 disaster occurred (if the declaration is related to a
4 major disaster), and State and local law enforcement
5 officials to determine whether any supplier in the af-
6 fected area is charging or has charged an uncon-
7 scionably excessive price for crude oil, gasoline, pe-
8 troleum distillates, or biofuel in the affected area;
9 and

10 (3) conduct investigations as appropriate to de-
11 termine whether any supplier in the affected area
12 has violated section 203 of this title, and upon such
13 finding, take any action the Commission determines
14 to be appropriate to remedy the violation.

15 **SEC. 206. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

16 (a) IN GENERAL.—A State, as *parens patriae*, may
17 bring a civil action on behalf of its residents in an appro-
18 priate district court of the United States to enforce the
19 provisions of section 203 of this title, or to impose the
20 civil penalties authorized by section 207 for violations of
21 section 203, whenever the attorney general of the State
22 has reason to believe that the interests of the residents
23 of the State have been or are being threatened or adversely
24 affected by a supplier engaged in the sale or resale, at
25 retail or wholesale, or distribution of crude oil, gasoline,

1 petroleum distillates, or biofuel in violation of section 203
2 of this title.

3 (b) NOTICE.—The State shall serve written notice to
4 the Commission of any civil action under subsection (a)
5 prior to initiating the action. The notice shall include a
6 copy of the complaint to be filed to initiate the civil action,
7 except that if it is not feasible for the State to provide
8 such prior notice, the State shall provide such notice im-
9 mediately upon instituting the civil action.

10 (c) AUTHORITY TO INTERVENE.—Upon receiving the
11 notice required by subsection (b), the Commission may in-
12 tervene in the civil action and, upon intervening—

13 (1) may be heard on all matters arising in such
14 civil action; and

15 (2) may file petitions for appeal of a decision in
16 such civil action.

17 (d) CONSTRUCTION.—For purposes of bringing any
18 civil action under subsection (a), nothing in this section
19 shall prevent the attorney general of a State from exer-
20 cising the powers conferred on the Attorney General by
21 the laws of such State to conduct investigations or to ad-
22 minister oaths or affirmations or to compel the attendance
23 of witnesses or the production of documentary and other
24 evidence.

1 (e) VENUE; SERVICE OF PROCESS.—In a civil action
 2 brought under subsection (a)—

3 (1) the venue shall be a judicial district in
 4 which—

5 (A) the defendant operates;

6 (B) the defendant was authorized to do
 7 business; or

8 (C) where the defendant in the civil action
 9 is found;

10 (2) process may be served without regard to the
 11 territorial limits of the district or of the State in
 12 which the civil action is instituted; and

13 (3) a person who participated with the defend-
 14 ant in an alleged violation that is being litigated in
 15 the civil action may be joined in the civil action with-
 16 out regard to the residence of the person.

17 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
 18 ACTION IS PENDING.—If the Commission has instituted
 19 a civil action or an administrative action for violation of
 20 this title, a State attorney general, or official or agency
 21 of a State, may not bring an action under this section
 22 during the pendency of that action against any defendant
 23 named in the complaint of the Commission or the other
 24 agency for any violation of this title alleged in the Com-
 25 mission's civil or administrative action.

1 (g) NO PREEMPTION.—Nothing contained in this
 2 section shall prohibit an authorized State official from pro-
 3 ceeding in State court to enforce a civil or criminal statute
 4 of that State.

5 **SEC. 207. PENALTIES.**

6 (a) CIVIL PENALTY.—

7 (1) IN GENERAL.—In addition to any penalty
 8 applicable under the Federal Trade Commission Act,
 9 any supplier—

10 (A) that violates section 203 of this title is
 11 punishable by a civil penalty of not more than
 12 \$1,000,000; and

13 (B) that violates section 203 of this title is
 14 punishable by a civil penalty of—

15 (i) not more than \$500,000, in the
 16 case of an independent small business mar-
 17 keter of gasoline (within the meaning of
 18 section 324(c) of the Clean Air Act (42
 19 U.S.C. 7625(c))); and

20 (ii) not more than \$5,000,000 in the
 21 case of any other supplier.

22 (2) METHOD.—The penalties provided by para-
 23 graph (1) shall be obtained in the same manner as
 24 civil penalties imposed under section 5 of the Fed-
 25 eral Trade Commission Act (15 U.S.C. 45).

1 (3) MULTIPLE OFFENSES; MITIGATING FAC-
2 TORS.—In assessing the penalty provided by sub-
3 section (a)—

4 (A) each day of a continuing violation shall
5 be considered a separate violation; and

6 (B) the court shall take into consideration,
7 among other factors, the seriousness of the vio-
8 lation and the efforts of the person committing
9 the violation to remedy the harm caused by the
10 violation in a timely manner.

11 (b) CRIMINAL PENALTY.—Violation of section 203 of
12 this title is punishable by a fine of not more than
13 \$5,000,000, imprisonment for not more than 5 years, or
14 both.

15 **SEC. 208. EFFECT ON OTHER LAWS.**

16 (a) OTHER AUTHORITY OF THE COMMISSION.—
17 Nothing in this title shall be construed to limit or affect
18 in any way the Commission’s authority to bring enforce-
19 ment actions or take any other measure under the Federal
20 Trade Commission Act (15 U.S.C. 41 et seq.) or any other
21 provision of law.

22 (b) STATE LAW.—Nothing in this title preempts any
23 State law.

**TITLE III—STRATEGIC
PETROLEUM RESERVE**

**SEC. 301. SUSPENSION OF PETROLEUM ACQUISITION FOR
STRATEGIC PETROLEUM RESERVE.**

(a) IN GENERAL.—Except as provided in subsection (b) and notwithstanding any other provision of law, during the period beginning on the date of enactment of this Act and ending on December 31, 2008—

(1) the Secretary of the Interior shall suspend acquisition of petroleum for the Strategic Petroleum Reserve through the royalty-in-kind program; and

(2) the Secretary of Energy shall suspend acquisition of petroleum for the Strategic Petroleum Reserve through any other acquisition method.

(b) RESUMPTION.—Not earlier than 30 days after the date on which the President notifies Congress that the President has determined that the weighted average price of petroleum in the United States for the most recent 90-day period is \$75 or less per barrel—

(1) the Secretary of the Interior may resume acquisition of petroleum for the Strategic Petroleum Reserve through the royalty-in-kind program; and

(2) the Secretary of Energy may resume acquisition of petroleum for the Strategic Petroleum Reserve through any other acquisition method.

1 (c) EXISTING CONTRACTS.—In the case of any oil
 2 scheduled to be delivered to the Strategic Petroleum Re-
 3 serve pursuant to a contract entered into by the Secretary
 4 of Energy prior to, and in effect on, the date of enactment
 5 of this Act, the Secretary shall, to the maximum extent
 6 practicable, negotiate a deferral of the delivery of the oil
 7 for a period of not less than 1 year, in accordance with
 8 procedures of the Department of Energy in effect on the
 9 date of enactment of this Act for deferrals of oil.

10 **TITLE IV—NO OIL PRODUCING** 11 **AND EXPORTING CARTELS**

12 **SEC. 401. NO OIL PRODUCING AND EXPORTING CARTELS** 13 **ACT OF 2008.**

14 (a) SHORT TITLE.—This section may be cited as the
 15 “No Oil Producing and Exporting Cartels Act of 2008”
 16 or “NOPEC”.

17 (b) SHERMAN ACT.—The Sherman Act (15 U.S.C.
 18 1 et seq.) is amended by adding after section 7 the fol-
 19 lowing:

20 **“SEC. 7A. OIL PRODUCING CARTELS.**

21 “(a) IN GENERAL.—It shall be illegal and a violation
 22 of this Act for any foreign state, or any instrumentality
 23 or agent of any foreign state, to act collectively or in com-
 24 bination with any other foreign state, any instrumentality
 25 or agent of any other foreign state, or any other person,

1 whether by cartel or any other association or form of co-
 2 operation or joint action—

3 “(1) to limit the production or distribution of
 4 oil, natural gas, or any other petroleum product;

5 “(2) to set or maintain the price of oil, natural
 6 gas, or any petroleum product; or

7 “(3) to otherwise take any action in restraint of
 8 trade for oil, natural gas, or any petroleum product;
 9 when such action, combination, or collective action has a
 10 direct, substantial, and reasonably foreseeable effect on
 11 the market, supply, price, or distribution of oil, natural
 12 gas, or other petroleum product in the United States.

13 “(b) SOVEREIGN IMMUNITY.—A foreign state en-
 14 gaged in conduct in violation of subsection (a) shall not
 15 be immune under the doctrine of sovereign immunity from
 16 the jurisdiction or judgments of the courts of the United
 17 States in any action brought to enforce this section.

18 “(c) INAPPLICABILITY OF ACT OF STATE DOC-
 19 TRINE.—No court of the United States shall decline,
 20 based on the act of state doctrine, to make a determina-
 21 tion on the merits in an action brought under this section.

22 “(d) ENFORCEMENT.—The Attorney General of the
 23 United States may bring an action to enforce this section
 24 in any district court of the United States as provided
 25 under the antitrust laws.”.

1 (c) SOVEREIGN IMMUNITY.—Section 1605(a) of title
 2 28, United States Code, is amended—

3 (1) in paragraph (6), by striking “or” after the
 4 semicolon;

5 (2) in paragraph (7), by striking the period and
 6 inserting “; or”; and

7 (3) by adding at the end the following:

8 “(8) in which the action is brought under sec-
 9 tion 7A of the Sherman Act.”.

10 **TITLE V—MARKET** 11 **SPECULATION**

12 **SEC. 501. SPECULATIVE LIMITS AND TRANSPARENCY FOR** 13 **OFF-SHORE OIL TRADING.**

14 Section 4 of the Commodity Exchange Act (7 U.S.C.
 15 6) is amended by adding at the end the following:

16 “(e) FOREIGN BOARDS OF TRADE.—

17 “(1) IN GENERAL.—In the case of any foreign
 18 board of trade for which the Commission has grant-
 19 ed or is considering an application to grant a board
 20 of trade located outside of the United States relief
 21 from the requirement of subsection (a) to become a
 22 designated contract market, derivatives transaction
 23 execution facility, or other registered entity, with re-
 24 spect to an energy commodity that is physically de-
 25 livered in the United States, prior to continuing to

1 or initially granting the relief, the Commission shall
2 determine that the foreign board of trade—

3 “(A) applies comparable principles or re-
4 quirements regarding the daily publication of
5 trading information and position limits or ac-
6 countability levels for speculators as apply to a
7 designated contract market, derivatives trans-
8 action execution facility, or other registered en-
9 tity trading energy commodities physically deliv-
10 ered in the United States; and

11 “(B) provides such information to the
12 Commission regarding the extent of speculative
13 and nonspeculative trading in the energy com-
14 modity that is comparable to the information
15 the Commission determines necessary to publish
16 a Commitment of Traders report for a des-
17 ignated contract market, derivatives transaction
18 execution facility, or other registered entity
19 trading energy commodities physically delivered
20 in the United States.

21 “(2) EXISTING FOREIGN BOARDS OF TRADE.—

22 During the period beginning 1 year after the date of
23 enactment of this subsection and ending 18 months
24 after the date of enactment of this subsection, the
25 Commission shall determine whether to continue to

1 grant relief in accordance with paragraph (1) to any
 2 foreign board of trade for which the Commission
 3 granted relief prior to the date of enactment of this
 4 subsection.”.

5 **SEC. 502. MARGIN LEVEL FOR CRUDE OIL.**

6 (a) IN GENERAL.—Section 2(a)(1) of the Commodity
 7 Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding
 8 at the end the following:

9 “(G) MARGIN LEVEL FOR CRUDE OIL.—
 10 Not later than 90 days after the date of enact-
 11 ment of this subparagraph, the Commission
 12 shall promulgate regulations to set a substantial
 13 increase in margin levels for crude oil traded on
 14 any trading facility or as part of any agree-
 15 ment, contract, or transaction covered by this
 16 Act in order to reduce excessive speculation and
 17 protect consumers.”.

18 (b) STUDIES.—

19 (1) STUDY RELATING TO EFFECT OF CERTAIN
 20 REGULATIONS.—Not later than 1 year after the date
 21 of enactment of this Act, the Commodity Futures
 22 Trading Commission shall submit to the appropriate
 23 committees of Congress a report describing the ef-
 24 fect of the amendment made by subsection (a) on
 25 any trading facilities and agreements, contracts, and

1 transactions covered by the Commodity Exchange
2 Act (7 U.S.C. 1 et seq.).

3 (2) STUDY RELATING TO EFFECTS OF CHANGES
4 IN MARGIN LEVELS.—Not later than 180 days after
5 the date of enactment of this Act, the Comptroller
6 General of the United States shall submit to the ap-
7 propriate committees of Congress a report describing
8 the effect (including any effect relating to trade vol-
9 ume or volatility) of any change of a margin level
10 that occurred during the 10-year period ending on
11 the date of enactment of this Act.

Calendar No. 743

110TH CONGRESS
2^D Session
S. 3044

A BILL

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

May 21, 2008

Read the second time and placed on the calendar