AMENDMENT TO THE SENATE AMENDMENTS TO H.R. 22
OFFERED BY MR. GARRETT OF NEW JERSEY

Page 1032, after line 4, insert the following:

SEC. 111. CIVIL ACTION AGAINST EXPORT-IMPORT BANK FOR CERTAIN HARM.

(a) CIVIL ACTION.—A person may bring a civil action against the Export-Import Bank of the United States in the appropriate United States district court for harm caused by the issuance by the Bank of a loan, guaranty, or other financing to another person if—

(1) the person bringing the action submitted comments pursuant to section 2(e)(7) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(7)) indicating harm the person would incur if the loan, guaranty, or other financing were provided to that other person;

(2) the Bank did not address the concerns indicated in comments submitted pursuant to section 2(e)(7) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(7)) with respect to the loan, guaranty, or other financing; or
(3) the person bringing the action demonstrates that—

(A) the person suffered a net loss of jobs, as a result of the loan, guaranty, or other financing; or

(B) the person suffered a decrease in business transactions or profits, as a result of the loan, guaranty, or other financing, of at least 5 percent over a 12-month period occurring since the loan, guaranty, or other financing was approved, except that, in the case of a minority- or female-owned business, this subparagraph shall be applied by substituting “1 percent” for “5 percent”.

(b) SUSPENSION OF ASSISTANCE.—Upon the filing of a civil action under subsection (a) with respect to a loan, guaranty, or other financing provided by the Export-Import Bank, the Bank shall suspend such assistance while the action is pending.

(c) BURDEN OF PROOF.—In a civil action brought under subsection (a), upon a prima facie showing by the plaintiff of the requirements set forth in paragraphs (1), (2), and (3) of subsection (a), the defendant has the burden of proving, by a preponderance of the evidence, that the such requirements have not been met.
(d) AWARD TO PREVAILING PLAINTIFF.—

(1) DAMAGES.—The Export-Import Bank shall be liable to a prevailing plaintiff or plaintiffs in a civil action brought under this section an award equal to 3 times the dollar amount of the loan that is the subject of the action and was provided, guaranteed, insured, or otherwise financed by the Export-Import Bank, plus a reasonable attorney’s fee.

(2) TERMINATION OF FINANCING.—In addition to the liability of the Export-Import Bank to a prevailing plaintiff under paragraph (1), the Export-Import Bank shall terminate the loan, guaranty, or other financing that is the subject of the civil action.

(e) STATUTE OF LIMITATIONS.—A civil action under this section may not be brought more than 5 years after the date on which the Export-Import Bank approves the loan, guaranty, or other financing that is the subject of the civil action.

(f) EXCLUSION.—A person may not bring a civil action under this section if the person has received a loan, guaranty, or other financing from the Export-Import Bank.
(g) APPEAL.—The Export-Import Bank may not appeal the judgment of the district court in any civil action brought under this section.