AMENDMENT TO THE SENATE AMENDMENTS TO
H.R. 22
OFFERED BY MR. MULVANEY OF SOUTH CAROLINA

Page 1032, after line 4, insert the following:

SEC. 95004. CERTIFICATION THAT BANK ASSISTANCE DOES NOT COMPETE WITH THE PRIVATE SECTOR.

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635), as amended by section 95001 of this Act, is amended by adding at the end the following:

“(l) Recipients of Bank assistance for a transaction of more than $10,000,000 required to certify inability to obtain credit elsewhere.—The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit, in connection with a transaction, with respect to which credit assistance from the Bank is first sought after the effective date of this paragraph, of more than $10,000,000, to a person, unless the person has—

“(1) certified to the Bank that the person has sought, and has been unable to obtain, private sector financing for the transaction without any Federal Government support; and
“(2) provided the Bank with documentation that at least 2 private financial institutions have declined to provide financing for the transaction.”.

SEC. 95005. FALSE CLAIMS ACT PROVISIONS.

(a) Applicability of False Claims Provisions to Export-Import Bank Transactions.—Section 3729(a) of title 31, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4);

(2) by inserting after paragraph (2) the following:

“(3) Additional Violations.—Any person who—

“(A) receives a loan or guarantee from the Export Import Bank of the United States for the purposes of supporting a project or venture, without conducting reasonable diligence to determine whether private sector financing would have been available to support the project or venture, whether or not the terms of the private sector financing would have been substantially different from the terms of the financing provided by the Export Import Bank of the United States; or
“(B) receives a loan or guarantee from the Export Import Bank of the United States for the purposes of supporting a project or venture, knowing that private sector financing would have been available to support the project or venture, whether or not the terms of the private sector financing would have been substantially different from financing provided by the Export Import Bank of the United States, is liable to the United States Government for the face value or the appraised value of the loan or guarantee, whichever amount is greater.”; and

(3) in paragraph (2)(A), by striking “the violation of this subsection” and inserting “a violation under paragraph (1)”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to acts described in paragraph (3) of section 3729(a) of title 31, United States Code, as added by subsection (a)(2) of this section, that are committed on or after the date of the enactment of this Act.

SEC. 95006. STATUTORY REQUIREMENT FOR EXPORT-IMPORT BANK CONTRACTS.

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635), as amended by sections 95001 and
95004 of this Act, is amended by adding at the end the following:

“(m) **EFFECTS OF FINDING BY INSPECTOR GENERAL**

**THAT CONTRACT RECIPIENT MADE INACCURATE REPRESENTATION ABOUT AVAILABILITY OF COMPETING FOREIGN FINANCING OR PRIVATE SECTOR FINANCING**.—

“(1) **RESCISSION OF CONTRACT.**—The Bank may not enter into a contract under which the Bank provides a loan or guarantee, unless the contract provides that, if the Inspector General of the Bank determines that a representation made by the recipient of the loan or guarantee about the availability of competing foreign export financing or private sector financing was inaccurate at the time the representation was made—

“(A) the contract shall be considered rescinded; and

“(B) the recipient shall immediately repay to the Bank an amount equal to—

“(i) in the case of a loan, the amount of the loan; or

“(ii) in the case of a guarantee, an amount equal to the appraised value of the guarantee.
“(2) Ineligibility for future financial support.—A person whose contract is rescinded under paragraph (1) shall not be eligible for any financial support from the Bank.”.