



## Legislative Bulletin.....May 1, 2002

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## **H.R. 2871 — Export-Import Bank Reauthorization Act of 2002 (Bereuter)**

**Order of Business:** The bill will be considered on Wednesday, May 1<sup>st</sup>, under a structured rule.

**Summary:** H.R. 2871 reauthorizes the Export-Import (Ex-Im) Bank until September 30, 2005, and creates offices on Small Business Exporters and Africa within the Bank. The legislation also improves the operation of the Tied Aid Credit Program, increases the value of transactions that the Bank can hold in its portfolio at any time, and raises the percentage of small business transactions the Bank should pursue. H.R. 2871 further mandates that the Bank take into consideration U.S. trade laws, corrupt practices of a recipient company, and a country's efforts to combat terrorism when considering a transaction.

**Detailed Summary:** H.R. 2871 authorizes an increase in Ex-Im's administrative expenses to \$80 million, adjusted annually for inflation. In addition, the ceiling on the total amount of loans, guarantees and insurance that Ex-Im can have outstanding at any one time is increased from \$75 billion to \$130 billion by 2005, adjusted for inflation.

The bill mandates that the Treasury Department establish a set of guidelines to govern the use of tied aid and to report back to Congress on its progress (tied aid is used to counter specific projects that are receiving foreign officially subsidized export financing). The Ex-Im Bank will administer the Tied Aid Credit Fund on a deal-by-deal basis in accordance with these standards. The bill contains provisions denying the Treasury Department any veto power over specific tied aid transactions and requires Ex-Im to establish procedures for the reconsideration of applications that have been turned down.

H.R. 2871 also authorizes the Tied Aid Credit Fund to be used to combat both market windows and untied aid by directing the Secretary of the Treasury to seek to negotiate agreements or “arrangements” on untied aid and market windows within the Organization for Economic Cooperation and Development (OECD) in an effort to eventually eliminate such

market altering tools. To reflect this change, the Tied Aid Credit Program and Fund is renamed the Export Competitiveness Program and Fund.

H.R. 2871 also:

- requires the Bank to promote the export of American goods and services related to renewable energy sources;
- requires the Bank to reevaluate its adverse impact test on United States industries as a result of the Benxi Iron and Steel Company Bank loan guarantee in Benxi, Liaoning, China. The Bank must report back to Congress on this reassessment within one year after enactment of the legislation;
- directs the Bank to implement both an electronic system designed to track all pending transactions and technology to allow customers to use the Internet to apply for all Bank programs;
- expands the percentage of small business transactions Ex-Im must pursue from 10 percent to 20 percent of total lending volume annually and establishes a requirement that 8 percent of Ex-Im lending be reserved for small business of less than 100 employees;
- requires the Bank, when considering a transaction, to take into account the extent to which a nation has been helpful or unhelpful in efforts to eradicate terrorism;
- reauthorizes the Sub-Saharan Africa Advisory Committee for 4 years and requires the bank to report to Congress annually for each of the four years on steps taken in Sub-Saharan Africa; and
- establishes an Office of Small Business Exporters and urges Ex-Im to improve its outreach to small businesses through improvements in technology.

**Additional Background:** Congress last authorized the Export-Import Bank in 1997 for a 4-year term, which expired on September 30, 2001. Since then, Congress has passed short-term authorizations through the FY 2002 Foreign Operations Appropriations bill and through stand-alone legislation on March 19, 2002, and April 30, 2002.

The mission of the Ex-Im Bank is to support export financing of U.S. goods and services. By law, the Bank is intended only to fill gaps in commercially available financing for U.S. exports by serving as a “lender of last resort,” and not competing with private lenders. Ex-Im is also required by law to work toward securing international agreements to reduce government-subsidized export financing, thereby promoting a level playing field for U.S. exporters.

Today, Ex-Im finances approximately 1 percent of U.S. exports annually. In FY 2000, Ex-Im financed \$12.6 billion in loans, guarantees, and insurance for the export of U.S. non-military goods and services. Examples of some of the goods that Ex-Im helped to export include, U.S. civilian aircraft, electronics, energy-related products, engineering services, medical equipment, vehicles, and agricultural equipment.

**Possible Amendments:**

*Bereuter (Manager's Amendment)* – Requires the Department of Treasury and Ex-Im Bank to jointly set the principles, processes and standards to govern the Tied Aid Credit Fund (in the underlying bill, only Treasury must do so).

*DeFazio* – Prohibits Bank assistance to any project that privatizes a government-held industry if that privatization: is not implemented in a transparent manner; is not implemented in a manner that adequately protects the interests of workers, small investors, and vulnerable groups in society; or if appropriate regulatory regimes have not been established to ensure properly functioning competitive markets.

*Kucinich* – Requires the Ex-Im Bank to gather information regarding applicant compliance with the Foreign Corrupt Practices Act.

*Sanders* – Requires companies receiving Ex-Im Bank assistance to submit the following information to the bank: number of employees in the U.S., number of employees outside the U.S., a description of the wages and benefits provided to U.S. employees, the percentage of the U.S. workforce laid off in the previous year, and the percentage of total workforce laid off in the previous year. The amendment also prohibits companies from receiving future Ex-Im Bank assistance if they lay off a greater percentage of workers in the U.S. than they lay off in foreign countries or if they fail to provide the Bank with the information required on lay-offs.

*Schakowsky* – Expresses the sense of Congress that for projects valued over \$10 million, detailed information on the potential impact of the project on human rights should be available to the management of the Bank.

**Possible RSC Concerns**: Members may view the activities of the Ex-Im Bank as questionable and a form of “corporate welfare.” Past Ex-Im Bank subsidies have gone to foreign governments, including the Communist regime in China, and to large multi-national corporations such as General Electric and Boeing. In addition, some Members may see the Ex-Im Bank as unnecessary, providing financing to countries that do not have trouble obtaining credit and, in many cases, displacing private investment by funding ventures that would otherwise have taken place.

Many RSC Members voted to strike Ex-Im Bank funding from the FY 2002 Foreign Operations Appropriations bill ([Roll Call #261, July 24, 2001](#)).

**Bush Administration Position**: No official Bush Administration position is available; however, Treasury Secretary Paul O’Neill has stated that the Treasury Department should have final approval of Ex-Im Bank loans, while H.R. 2871 leaves such decisions to the Bank’s board.

**Outside Organizations**: The National Association of Manufacturers (NAM) is considering H.R. 2871 a key vote.

**Cost to Taxpayers**: CBO estimates that implementing H.R. 2871 would cost \$215 million in 2002 and \$3.1 billion over 2002-2006, subject to annual appropriations. In addition, the bill

contains provisions that would increase obligations from available balances in the Tied Aid Credit Fund. CBO estimates implementing those provisions would increase direct spending by \$9 million in 2002 and \$128 million over 2002-2006.

**Does the Bill Create New Federal Programs or Rules?:** Yes, as described above.

**Constitutional Authority:** The Committee report cites constitutional authority provided in Article 1, Section 8, Clause 1 (relating to the general welfare of the United States) and Clause 3 (relating to the power to regulate interstate and foreign commerce).

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## **H.R. 2604 - Multinational Development Banks Authorization Act (Bereuter)**

**Order of Business:** Under previous agreement, the bill is scheduled to be considered on Wednesday, May 1, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 2604 would authorize the appropriation of \$412 million for the US contribution toward the seventh replenishment of funds for the Asian Development Fund (ADF) and \$30 million for the fifth replenishment of the International Fund for Agriculture Development (IFAD). The bill also would authorize the appropriation of \$10 million in 2002 for grants to the multilateral development banks for the cost of increasing the “transparency” of their operations.

H.R. 2604 requires the Treasury Secretary **to direct the US representatives to the ADF, IFAD, and the regional multilateral development banks to support efforts to develop and implement “a strategic plan to fight against the spread of HIV/AIDS, tuberculosis, malaria, and other infectious diseases”** and to incorporate these impact assessment criteria and professional staff training into the process considered by the funds when designing and evaluating new proposals. In other words, proposals seeking funds from ADF and IFAD will need to incorporate AIDS and other infectious disease information and training into their economic development projects.

The bill requires the Treasury Secretary to direct the US representatives to the ADF, IFAD, and the **regional multilateral development banks “to focus on poverty alleviation, economic growth, increased productivity, sustainable development, environmental protection, labor rights, and an increased focus on education”** [emphasis added].

The bill requires the Treasury Secretary to instruct the US representatives to these groups to reject direct or hidden user fees for impoverished countries and to **reject any projects to build dams unless the projects meet the following 5-point test outlined in the bill:**

- (1) Comprehensive and participatory assessments of the energy, water, and flood management needs to be met and different options for meeting these needs are developed before detailed studies are done on any specific project.

- (2) Priority is given to demand side management measures and optimizing the performance of existing infrastructure before building any new projects.
- (3) No dam is built without full consultation with affected people.
- (4) Periodic participatory reviews are done for existing dams to assess issues including dam safety, and the possibility of dam decommissioning.
- (5) Mechanisms are developed to provide social compensation for those who are suffering the impacts of dams, and to restore damaged ecosystems.

The bill contains a Sense of Congress that the Secretary of the Treasury should instruct the U.S. contingent of the Development Banks to use the voice and vote of the United States to oppose assistance for a project that involves privatization of a government industry if

- the privatization transaction is not implemented in a transparent manner;
- the privatization transaction is not implemented in a manner that adequately protects the interests of workers, small investors, and vulnerable groups in society to the extent that they are affected by the privatization transaction; or
- appropriate regulatory regimes have not been established to ensure the proper function of competitive markets in the industry or sector.

**Additional Information:** The Asian Development Fund (AsDF) is the concessional lending arm of the Asian Development Bank, the multilateral development bank for the Asia-Pacific region. The AsDF provides loans on highly concessional terms to those developing member countries (DMCs) with a low per capita gross national product (GNP), and limited debt repayment capacity. Therefore, funds are lent at concessional interest rates with repayment terms of 24 to 38 years. Established in 1973, AsDF resources have been replenished six times. Authorization for the seventh replenishment will last until FY 2005.

The International Fund for Agricultural Development (IFAD) was established as an international financial institution in 1977 as a result of the 1974 World Food Conference. Unlike other regional multilateral development banks (MDBs), which have a broad range of objectives, the Fund has a specific functional mandate: to combat hunger and rural poverty in developing countries. There have been four replenishments of IFAD's resources since its founding. H.R. 2604 addresses, among other things, the U.S. commitment to the fifth replenishment of IFAD.

The regional multilateral development banks include: the Asian Development Bank/Fund; the African Development Bank/Fund; the Inter-American Development Bank, and the European Bank for Reconstruction and Development.

**Cost to Taxpayers:** Sections 1 and 2 of H.R. 2604 authorize the appropriation of \$412 million for the ADF and \$30 million for the IFAD, in addition to \$10 million in 2002 for “transparency” grants to the multilateral development banks. International agreements to replenish the resources of multilateral development banks typically cover a number of years

and thus **CBO estimates that implementing H.R. 2604 would cost \$25 million in 2002 and \$276 million over the 2002-2006 period, subject to appropriation** (CBO assumes the authorized amount for the ADF would be provided in four installments of \$103 million a year over the 2002-2005 period. Similarly, CBO assumes the \$30 million authorization for the IFAD would be provided in two installments of \$15 million a year in 2002 and 2003 and that the transparency grants would cost \$10 million over the 2002-2006 period.)

**Does the Bill Create New Federal Programs or Rules?:** The bill authorizes new spending for the Asian Development Fund (ADF) and the International Fund for Agriculture Development (IFAD) and requires the Treasury Secretary to direct US representatives to these groups to follow certain policy guidelines.

The bill requires within 3 months a report from the Secretary of Treasury to Congress on the participation of the International Fund for Agricultural Development in the Enhanced HIPC Initiative, and a GAO study, within one year, on an initiative proposed by the Bush Administration to provide grants to developing countries instead of loans through the multilateral development banks.

**Possible RSC Concerns:**

1. The bill requires that US representatives “focus on poverty alleviation, economic growth, increased productivity, sustainable development, environmental protection, labor rights, and an increased focus on education,” yet there is no definition of these terms. Radical population control groups such as Zero Population Growth, who argue that people endanger the earth and praise government-run population control programs that slow human reproduction to so-called “sustainable” levels, often use “Sustainable Development” as a catch phrase. “Labor rights” could mean a whole variety of things, possibly offensive to conservatives.
2. The requirement to focus on preventing the “spread of HIV/AIDS” does not define whether the approach should be one of promoting abstinence, which the President supports, nor does it specify contraception distribution programs: thus apparently leaving these determinations to the bureaucrats within these agencies.
3. The requirement to oppose dam construction absent a strict five-point test could greatly hinder economic development and essentially validates the arguments made by environmentalists in this country who are seeking to tear down existing dams.

**Constitutional Authority:** The Committee on Financial Services (in report #107-291) finds constitutional authority under “Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).”

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## **Motion to Instruct Conferees on H.R. 2215 (21<sup>st</sup> Century Department of Justice Authorization Act) (*DeGette*)**

**Order of Business:** Rep. Diana DeGette (D-CO) is expected to offer her motion to instruct conferees on Wednesday, May 1<sup>st</sup>.

**Summary:** The DeGette motion would instruct conferees on the Justice Department authorization bill to accept Senate language on the establishment of the Violence against Women Office (VAWO) within that Department under the authority of the Attorney General. The Office would not be established within any division and would be headed by a separate, presidentially-appointed (and Senate-confirmed) director who would report to the Attorney General through the Associate Attorney General.

VAWO would have jurisdiction over all matters related to “administration, enforcement, coordination, and implementation of all responsibilities of the Attorney General or the Department of Justice related to violence against women, including formula and discretionary grant programs authorized under the Violence Against Women Act of 1994 (title IV of Public Law 103-322) and the Violence Against Women Act of 2000 (Division B of Public Law 106-386).” VAWO’s director would serve as special counsel to the Attorney General on the issue of violence against women.

Additionally, the DeGette motion would instruct conferees to insist upon the additional duties for VAWO contained in the House-passed bill. Some of these duties include:

- Maintaining liaison with the judicial branches of the Federal and State Governments on matters relating to violence against women;
  - Providing information to the President, the Congress, the judiciary, State and local governments, and the general public on matters relating to violence against women;
  - Serving, at the request of the Attorney General or Assistant Attorney General, as the representative of the Department of Justice on domestic task forces, committees, or commissions addressing policy or issues relating to violence against women;
  - Serving, at the request of the President, acting through the Attorney General, as the representative of the United States Government on human rights and economic justice matters related to violence against women in international fora, including, but not limited to, the United Nations;
  - Providing technical assistance, coordination, and support to other components of the Department of Justice, in efforts to develop policy and to enforce Federal laws relating to violence against women, including the litigation of civil and criminal actions relating to enforcing such laws;
  - Providing technical assistance to other Federal, State, and tribal agencies, in efforts to develop policy, provide technical assistance, and improve coordination among agencies carrying out efforts to eliminate violence against women, including Indian or indigenous women;
  - Exercising such other powers and functions as may be vested in the Director pursuant to this part or by delegation of the Attorney General or Assistant Attorney General;
- and

- Establishing such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Office.

VAWO would be authorized “such sums as are necessary” for “adequate staff” to carry out its duties.

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