

110TH CONGRESS  
2D SESSION

# S. 3715

To provide for emergency bridge loan assistance to automobile manufacturers and component suppliers.

---

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2008

Mr. LEVIN (for himself, Mr. BOND, Ms. STABENOW, Mr. VOINOVICH, Mr. BROWN, Mr. SPECTER, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Appropriations

---

## A BILL

To provide for emergency bridge loan assistance to automobile manufacturers and component suppliers.

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 “Auto Industry Emer-  
5 gency Bridge Loan Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AUTOMOBILE MANUFACTURER OR COMPO-**  
9 **NENT SUPPLIER.**—The term “automobile manufac-  
10 turer or component supplier” means an automobile

1 manufacturer or component supplier or any suc-  
2 cessor thereto.

3 (2) GOLDEN PARACHUTE PAYMENT.—The term  
4 “golden parachute payment” means any payment to  
5 a senior executive officer for departure from a com-  
6 pany for any reason.

7 (3) FINANCIAL VIABILITY.—The term “finan-  
8 cial viability” means, using generally acceptable ac-  
9 counting principles, that there is a reasonable pros-  
10 pect that the applicant will be able to make pay-  
11 ments of principal and interest on the loan as and  
12 when such payments become due under the terms of  
13 the loan documents, and that the applicant has a net  
14 present value that is positive.

15 (4) SECRETARY.—The term “Secretary” means  
16 the Secretary of Commerce.

17 (5) SENIOR EXECUTIVE OFFICER.—The term  
18 “senior executive officer” means an individual who is  
19 one of the top five most highly paid executives of a  
20 public company, whose compensation is required to  
21 be disclosed pursuant to the Securities Exchange  
22 Act of 1934, and any regulations issued thereunder,  
23 and nonpublic company counterparts.

1 **SEC. 3. AUTO INDUSTRY EMERGENCY BRIDGE LOAN PRO-**  
2 **GRAM.**

3 On or before March 31, 2009, the Secretary shall  
4 make loans from funds provided under this section to  
5 automobile manufacturers or component suppliers that  
6 have—

7 (1) operations in the United States, the failure  
8 of which would have a systemic adverse effect on the  
9 overall United States economy or a significant loss  
10 of United States jobs, as determined by the Sec-  
11 retary;

12 (2) operated a manufacturing facility for the  
13 purposes of producing automobiles or automobile  
14 components in the United States throughout the 20-  
15 year period ending on the date of the enactment of  
16 this Act; and

17 (3) submitted a complete application for a loan  
18 under this section pursuant to section 4(a), which  
19 has been determined eligible under section 4(b).

20 **SEC. 4. PLAN TO ENSURE FINANCIAL VIABILITY OF BOR-**  
21 **ROWER.**

22 (a) IN GENERAL.—At the time of application for a  
23 loan under this Act, an automobile manufacturer or com-  
24 ponent supplier shall submit to the Secretary a detailed  
25 plan that describes how the requested Government  
26 funds—

1           (1) would be utilized to ensure the financial via-  
2           bility of the manufacturer or supplier;

3           (2) would stimulate automobile production in  
4           the United States; and

5           (3) would improve the capacity of the manufac-  
6           turer or supplier to pursue the timely and aggressive  
7           production of energy-efficient advanced technology  
8           vehicles.

9           (b) PLAN CONTENTS.—A plan submitted under this  
10          section shall detail cost control measures and performance  
11          goals and milestones.

12       **SEC. 5. APPLICATIONS, ELIGIBILITY AND DISBURSEMENTS.**

13          (a) APPLICATIONS.—On and after the date that is 3  
14          days after the date of the enactment of this Act, the Sec-  
15          retary shall accept applications for loans under this Act.

16          (b) DETERMINATION OF ELIGIBILITY.—Not later  
17          than 15 days after the date on which the Secretary re-  
18          ceives a complete application for a loan under subsection  
19          (a), the Secretary shall, after consultation with other Ex-  
20          ecutive Branch officials, determine whether—

21               (1) the applicant meets the requirements de-  
22               scribed in sections 3 and 4;

23               (2) the disbursement of funds and the success-  
24               ful implementation of the required plan would en-  
25               sure the financial viability of the applicant; and

1           (3) the applicant is therefore eligible to receive  
2           a loan under this Act.

3           (c) DISBURSEMENT.—The Secretary shall begin dis-  
4           bursement of the proceeds of a loan under this Act to an  
5           eligible applicant not later than 7 days after the date on  
6           which the Secretary receives a disbursal request from the  
7           applicant.

8           (d) WARRANTS AND DEBT INSTRUMENTS.—The Sec-  
9           retary may not make a loan under this Act unless the Sec-  
10          retary receives from the automobile manufacturer or com-  
11          ponent supplier a warrant or senior debt instrument from  
12          the manufacturer made in accordance with the require-  
13          ments for a warrant or senior debt instrument by a finan-  
14          cial institution under section 113(d) of the Emergency  
15          Economic Stabilization Act of 2008 (division A of Public  
16          Law 110–343).

17 **SEC. 6. REPLENISHMENT OF ADVANCED TECHNOLOGY VE-**  
18 **HICLE MANUFACTURING INCENTIVE PRO-**  
19 **GRAM.**

20          (a) EQUITY SALES.—

21           (1) SALES AUTHORIZED.—The Secretary may  
22           sell, exercise, or surrender any equity instrument re-  
23           ceived under this Act.

24           (2) TURNAROUND PROFITS TO RESTORE AD-  
25           VANCED VEHICLES MANUFACTURING INCENTIVE

1 PROGRAM.—Proceeds received from a sale, exercise,  
2 or surrender under paragraph (1) may be credited to  
3 the appropriate Government financing account made  
4 available to fulfill the advanced technology vehicle  
5 manufacturing incentive purpose under section 136  
6 of the Energy Independence and Security Act of  
7 2007 (Public Law 110–140; 42 U.S.C. 17013) until  
8 the amount loaned under this Act has been repaid.

9 (3) REDUCTION OF PUBLIC DEBT.—Proceeds  
10 received from a sale, exercise, or surrender under  
11 paragraph (1) that takes place after the amount  
12 loaned under this Act has been repaid in accordance  
13 with paragraph (2) may be used to reduce the public  
14 debt.

15 (b) REPAID LOAN FUNDS.—

16 (1) IN GENERAL.—Loan amounts repaid under  
17 this Act may be credited to the appropriate Govern-  
18 ment financing account made available to fulfill the  
19 advanced technology vehicle manufacturing incentive  
20 purpose of section 136 of the Energy Independence  
21 and Security Act of 2007 until the amount loaned  
22 under this Act is repaid.

23 (2) REDUCTION OF PUBLIC DEBT.—Loan  
24 amounts repaid under this Act after the amount

1        loaned under this Act has been repaid may be used  
2        to reduce the public debt.

3        **SEC. 7. LIMITS ON EXECUTIVE COMPENSATION.**

4        (a) STANDARDS REQUIRED.—The Secretary shall re-  
5        quire any recipient of a loan under this Act to meet appro-  
6        priate standards for executive compensation and corporate  
7        governance.

8        (b) SPECIFIC REQUIREMENTS.—The standards es-  
9        tablished under subsection (a) shall include the following:

10            (1) Limits on compensation that exclude incen-  
11            tives for senior executive officers of a recipient of a  
12            loan under this Act to take unnecessary and exces-  
13            sive risks that threaten the value of such recipient  
14            during the period that the loan is outstanding.

15            (2) A provision for the recovery by such recipi-  
16            ent of any bonus or incentive compensation paid to  
17            a senior executive officer based on statements of  
18            earnings, gains, or other criteria that are later found  
19            to be materially inaccurate.

20            (3) A prohibition on such recipient making any  
21            golden parachute payment to a senior executive offi-  
22            cer during the period that the loan under this Act  
23            is outstanding.

24            (4) A prohibition on such recipient paying or  
25            accruing any bonus or incentive compensation dur-

1       ing the period that the loan under this Act is out-  
2       standing to any executive whose annual base com-  
3       pensation exceeds \$250,000 (which amount shall be  
4       adjusted by the Secretary for inflation).

5           (5) A prohibition on any compensation plan  
6       that could encourage manipulation of the reported  
7       earnings of the recipient to enhance compensation of  
8       any of its employees.

9       **SEC. 8. PROHIBITION ON THE USE OF LOAN PROCEEDS**  
10                           **FOR LOBBYING ACTIVITIES.**

11       (a) IN GENERAL.—A recipient of a loan under this  
12       Act may not use such funds for any lobbying expenditures  
13       or political contributions.

14       (b) DEFINITIONS.—In this section:

15           (1) LOBBYING EXPENDITURES.—The term  
16       “lobbying expenditures” has the meaning given the  
17       term in section 4911(c)(1) of the Internal Revenue  
18       Code of 1986.

19           (2) POLITICAL CONTRIBUTIONS.—The term  
20       “political contribution” means any contribution on  
21       behalf of a political candidate or to a separate seg-  
22       regated fund described in section 316(b)(2)(C) of  
23       the Federal Election Campaign Act of 1971 (2  
24       U.S.C. 441b(b)(2)(C)).

1 **SEC. 9. PROHIBITION ON PAYMENT OF DIVIDENDS.**

2 No common stock dividends may be paid by any re-  
3 cipient of a loan under this Act for the duration of the  
4 loan.

5 **SEC. 10. AUTO INDUSTRY EMERGENCY BRIDGE LOAN OVER-**  
6 **SIGHT BOARD.**

7 (a) ESTABLISHMENT.—There is established the Auto  
8 Industry Emergency Bridge Loan Oversight Board (in  
9 this section referred to as the “Board”), which shall be  
10 responsible for reviewing and providing advice concerning  
11 the exercise of authority under this Act, including—

12 (1) the progress of the applicant in meeting the  
13 performance goals and milestones under its financial  
14 viability plan required under section 4;

15 (2) recommending changes, as necessary and  
16 appropriate, to the Secretary in meeting the goals  
17 and milestones under the financial viability plan,  
18 and senior management and board of directors to  
19 the automobile manufacturers and component sup-  
20 pliers assisted under this Act; and

21 (3) reporting any suspected fraud, misrepresen-  
22 tation, or malfeasance to the Inspector General of  
23 the Department of Commerce or the Attorney Gen-  
24 eral of the United States, consistent with section  
25 535(b) of title 28, United States Code.

1 (b) MEMBERSHIP.—The Board shall be comprised  
2 of—

3 (1) the Secretary of Commerce;

4 (2) the Secretary of Energy;

5 (3) the Secretary of Transportation;

6 (4) the Secretary of the Treasury;

7 (5) the Secretary of Labor; and

8 (6) the Administrator of the Environmental  
9 Protection Agency.

10 (c) CHAIRPERSON.—The chairperson of the Board  
11 shall be the Secretary of Commerce.

12 (d) MEETINGS.—The Board shall meet—

13 (1) not later than 14 days after the first dis-  
14 bursement of funds provided under this Act; and

15 (2) not less frequently than monthly thereafter.

16 (e) REPORTS.—The Board shall report to the appro-  
17 priate committees of Congress, not less frequently than  
18 quarterly, on the matters described under this section.

19 (f) OVERSIGHT OF TRANSACTIONS AND FINANCIAL  
20 CONDITION.—

21 (1) DUTY TO INFORM.—During the period in  
22 which any loan extended under this Act remains out-  
23 standing, the recipient of such loan shall promptly  
24 inform the Secretary and the Board of—

1 (A) any asset sale, investment, or commit-  
2 ment for any asset sale or investment proposed  
3 to be entered into by such recipient that has a  
4 value in excess of \$25,000,000; and

5 (B) any other material change in the fi-  
6 nancial condition of such recipient.

7 (2) AUTHORITY OF THE SECRETARY.—During  
8 the period in which any loan extended under this Act  
9 remains outstanding, the Secretary, in consultation  
10 with the Board, may—

11 (A) promptly review any asset sale or in-  
12 vestment described in paragraph (1) or any  
13 commitment for such asset sale or investment;  
14 and

15 (B) direct the recipient of the loan that it  
16 should not consummate such proposed sale or  
17 investment or commitment for such sale or in-  
18 vestment.

19 (3) REGULATIONS.—The Board may establish,  
20 by regulation, procedures for conducting any review  
21 under this subsection.

22 (g) TERMINATION.—The Board, and its authority  
23 under this section, shall terminate not later than 6 months  
24 after the date on which the last loan amounts under this  
25 section are repaid.

1 **SEC. 11. PRIORITIZATION OF LOAN ALLOCATIONS.**

2 In allocating loan amounts under this Act, the Sec-  
3 retary shall consider the magnitude of the impact of the  
4 manufacturing operations of the applicant in the United  
5 States on the overall economy of the United States and  
6 other segments of the automobile industry, including the  
7 impact on levels of employment, domestic manufacturing  
8 of automobiles and automobile components, and auto-  
9 mobile dealerships.

10 **SEC. 12. RATE OF INTEREST.**

11 The annual rate of interest for a loan under this Act  
12 shall be—

13 (a) 5 percent during the 5-year period beginning on  
14 the date on which the Secretary disburses the loan; and

15 (b) 9 percent after the end of the period described  
16 in paragraph (1).

17 **SEC. 13. NO PREPAYMENT PENALTY.**

18 A loan made under this Act shall be prepayable with-  
19 out penalty at any time.

20 **SEC. 14. DISCHARGE.**

21 A discharge under title 11, United States Code, shall  
22 not discharge the borrower from any debt for funds au-  
23 thorized to be disbursed under this Act.

24 **SEC. 15. FEES.**

25 (a) IN GENERAL.—The Secretary may charge and  
26 collect fees for disbursements under this Act in amounts

1 that the Secretary determines are sufficient to cover appli-  
2 cable administrative expenses.

3 (b) AVAILABILITY.—Fees collected under this sec-  
4 tion—

5 (1) shall be deposited by the Secretary into the  
6 Treasury of the United States;

7 (2) shall be used by the Secretary to pay ad-  
8 ministrative expenses of making awards and loans  
9 under this Act; and

10 (3) shall remain available until expended, with-  
11 out further appropriation.

12 **SEC. 16. JUDICIAL REVIEW AND RELATED MATTERS.**

13 (a) STANDARDS.—Actions by the Secretary pursuant  
14 to the authority of this Act shall be subject to chapter  
15 7 of title 5, United States Code, including that such final  
16 actions shall be held unlawful and set aside if found to  
17 be arbitrary, capricious, an abuse of discretion, or not in  
18 accordance with law.

19 (b) LIMITATIONS ON EQUITABLE RELIEF.—

20 (1) INJUNCTION.—No injunction or other form  
21 of equitable relief shall be issued against the Sec-  
22 retary for actions pursuant to this Act, other than  
23 to remedy a violation of the Constitution.

24 (2) TEMPORARY RESTRAINING ORDER.—Any  
25 request for a temporary restraining order against

1 the Secretary for actions pursuant to this Act shall  
2 be considered and granted or denied by the court  
3 within 3 days of the date of the request.

4 (3) PRELIMINARY INJUNCTION.—Any request  
5 for a preliminary injunction against the Secretary  
6 for actions pursuant to this Act shall be considered  
7 and granted or denied by the court on an expedited  
8 basis consistent with the provisions of rule 65(b)(3)  
9 of the Federal Rules of Civil Procedure, or any suc-  
10 cessor to such rule.

11 (4) PERMANENT INJUNCTION.—Any request for  
12 a permanent injunction against the Secretary for ac-  
13 tions pursuant to this Act shall be considered and  
14 granted or denied by the court on an expedited  
15 basis. Whenever possible, the court shall consolidate  
16 trial on the merits with any hearing on a request for  
17 a preliminary injunction, consistent with the provi-  
18 sions of rule 65(a)(2) of the Federal Rules of Civil  
19 Procedure, or any successor to such rule.

20 (5) LIMITATION ON ACTIONS BY PARTICIPATING  
21 COMPANIES.—No action or claims may be brought  
22 against the Secretary by any person that divests its  
23 assets with respect to its participation in a program  
24 under this Act, except as provided in paragraph (1),

1 other than as expressly provided in a written con-  
2 tract with the Secretary.

3 (6) STAYS.—Any injunction or other form of  
4 equitable relief issued against the Secretary for ac-  
5 tions pursuant to this Act shall be automatically  
6 stayed. The stay shall be lifted, unless the Secretary  
7 seeks a stay from a higher court within 3 calendar  
8 days after the date on which the relief is issued.

9 (c) SAVINGS CLAUSE.—Any exercise of the authority  
10 of the Secretary pursuant to this section shall not impair  
11 the claims or defenses that would otherwise apply with re-  
12 spect to persons other than the Secretary.

13 **SEC. 17. FUNDING.**

14 (a) IN GENERAL.—The \$7,500,000,000 appropriated  
15 for fiscal year 2009 for direct loans under section 129 of  
16 the Consolidated Security, Disaster Assistance, and Con-  
17 tinuing Appropriations Act, 2009 (division A of Public  
18 Law 110–329) is rescinded.

19 (b) APPROPRIATIONS.—There is appropriated to the  
20 Secretary of Commerce \$7,500,000,000 to the “Depart-  
21 ment of Commerce—Emergency Bridge Loan Program  
22 Account” for the cost of direct loans authorized under this  
23 Act, which shall remain available until expended. Commit-  
24 ments for direct loans using such amount shall not exceed  
25 \$25,000,000,000 in total loan principal. The cost of such

1 direct loans, including the cost of modifying such loans,  
2 shall be calculated in accordance with section 502 of the  
3 Congressional Budget Act of 1974 (2 U.S.C. 661a).

4 (c) TRANSFERS FOR DIRECT LOANS.—Following the  
5 receipt of a notice from the Secretary of Energy certifying  
6 the approval of a loan under the program authorized  
7 under section 136 of the Energy Independence and Secu-  
8 rity Act of 2007 (Public Law 110–140; 42 U.S.C. 17013),  
9 the Secretary may transfer amounts made available under  
10 this Act to the Secretary of Energy, in an amount suffi-  
11 cient for the cost of the direct loans if such transfer would  
12 not cause the Secretary to exceed the total appropriation  
13 and total commitment level authorized under subsection  
14 (b). Any amounts so transferred shall be available to the  
15 Secretary of Energy without fiscal year limitation and  
16 subject to the terms and conditions described in section  
17 129 of the Consolidated Security, Disaster Assistance, and  
18 Continuing Appropriations Act, 2009.

19 (d) USE OF REMAINING AMOUNTS.—Amounts appro-  
20 priated under subsection (b) which remain available after  
21 March 31, 2009, shall be transferred to the Secretary of  
22 Energy and shall be used to carry out section 136 of the  
23 Energy Independence and Security Act of 2007, subject  
24 to the terms and conditions described in section 129 of

1 the Consolidated Security, Disaster Assistance, and Con-  
2 tinuing Appropriations Act, 2009.

3 **SEC. 18. COORDINATION WITH OTHER LAWS REGARDING**  
4 **PROMOTION OF ADVANCED TECHNOLOGY VE-**  
5 **HICLE MANUFACTURING.**

6 Nothing in the Act may be construed as altering, af-  
7 fecting, or superseding the provisions of section 136 of the  
8 Energy Independence and Security Act of 2007, relating  
9 to the technology requirements for energy efficient vehi-  
10 cles.

○