

116TH CONGRESS  
2D SESSION

# S. 4835

To prohibit bank holding companies from facilitating fossil fuel production from new sources or new or expanded fossil infrastructure that would drive such production, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

OCTOBER 21 (legislative day, OCTOBER 19), 2020

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

## A BILL

To prohibit bank holding companies from facilitating fossil fuel production from new sources or new or expanded fossil infrastructure that would drive such production, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting America’s  
5 Economy from the Carbon Bubble Act of 2020”.

1 **SEC. 2. PROHIBITION ON FACILITATING FOSSIL FUEL PRO-**  
2 **DUCTION FROM NEW SOURCES.**

3 The Bank Holding Company Act of 1956 (12 U.S.C.  
4 1841 et seq.) is amended by adding at the end the fol-  
5 lowing:

6 **“SEC. 15. PROHIBITION ON FACILITATING FOSSIL FUEL**  
7 **PRODUCTION FROM NEW SOURCES.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘financial company’ means—

10 “(A) a bank holding company, savings and  
11 loan holding company, or similar institution;

12 “(B) a foreign banking organization or  
13 company that is treated as a bank holding com-  
14 pany under this Act;

15 “(C) an insured depository institution, a  
16 thrift institution, a savings association, an in-  
17 dustrial loan company, or similar institution; or

18 “(D) any subsidiary, agency, or affiliate of  
19 an entity described in subparagraph (A) or (B);

20 “(2) the term ‘fossil fuel’ means coal, petro-  
21 leum, natural gas, or any derivative of coal, petro-  
22 leum, or natural gas that is used for fuel;

23 “(3) the term ‘fossil infrastructure’ means fossil  
24 fuel-related projects, including wells, rail infrastruc-  
25 ture, pipelines, terminals, refineries, and power  
26 plants;

1 “(4) the term ‘new sources’ means—

2 “(A) any production in excess of proven  
3 developed producing reserves of fossil fuels as  
4 of the date of enactment of this section; or

5 “(B) new or expanded fossil infrastructure  
6 that would facilitate the production described in  
7 subparagraph (A); and

8 “(5) the term ‘production’ means extractive or  
9 production activities that result in fossil fuels being  
10 made available for refining or use.

11 “(b) PROHIBITION.—No financial company may fa-  
12 cilitate fossil fuel production, including by—

13 “(1) providing loans to, making investments in,  
14 or otherwise engaging in any activity that is finan-  
15 cial in nature, or incidental to such financial activ-  
16 ity, with a fossil fuel company;

17 “(2) providing loans to, making investments in,  
18 or otherwise engaging in any activity that is finan-  
19 cial in nature, or incidental to such financial activ-  
20 ity, for a fossil fuel project;

21 “(3) taking compensation to arrange or facili-  
22 tate a transaction that provides funds for fossil fuel  
23 production from new sources;

24 “(4) securitizing assets that provide funds for  
25 fossil fuel production from new sources;

1           “(5) entering into a derivatives transaction de-  
2           signed to provide funding for, facilitate, or hedge  
3           risks from fossil fuel production from new sources;

4           “(6) engaging in any activity that is com-  
5           plementary to a financial activity involving fossil fuel  
6           production from new sources, including financing the  
7           international trade thereof; or

8           “(7) any other form of activity defined by regu-  
9           lators or supervisors of the financial company.

10          “(c) PENALTIES.—

11           “(1) CRIMINAL PENALTY.—

12           “(A) IN GENERAL.—Whoever knowingly  
13           violates any provision of this section or, being  
14           a company, violates any regulation or order  
15           issued by the Board under this section, shall be  
16           imprisoned not more than 1 year, fined not  
17           more than \$1,000,000 per day for each day  
18           during which the violation continues, or both.

19           “(B) INTENT TO DECEIVE, DEFRAUD, OR  
20           PROFIT.—Whoever, with the intent to deceive,  
21           defraud, or profit significantly, knowingly vio-  
22           lates any provision of this section shall be im-  
23           prisoned not more than 5 years, fined not more  
24           than \$5,000,000 per day for each day during  
25           which the violation continues, or both.

1           “(2) PROHIBITION ON EMPLOYMENT.—Any in-  
2           dividual who knowingly violates any provision of this  
3           section shall be banned from future employment  
4           with any bank holding company or publicly traded  
5           corporation.

6           “(3) CIVIL MONETARY PENALTY.—Any com-  
7           pany that violates, and any individual who partici-  
8           pates in a violation of, any provision of this section,  
9           or any regulation or order issued pursuant thereto,  
10          shall forfeit all revenues associated with such a vio-  
11          lation and pay an additional civil penalty of not  
12          more than \$25,000 for each day during which the  
13          violation continues.

14          “(d) COMPLIANCE PROGRAM.—

15                 “(1) IN GENERAL.—Banking organizations  
16                 shall maintain policies and procedures reasonably  
17                 designed to ensure that relationships with customers  
18                 or counterparties do not facilitate fossil fuel produc-  
19                 tion from new sources.

20                 “(2) ATTESTATION.—The chief executive officer  
21                 of each financial company shall comply with an at-  
22                 testation for compliance with this section, subject to  
23                 such rules as the Board may prescribe that shall be  
24                 no less strict than those set forth under section

1       351.20(c) of title 12, Code of Federal Regulations,  
2       or any successor regulation.

3           “(3) SUPERVISION.—The appropriate Federal  
4       banking agency shall supervise the policies and pro-  
5       cedures described in this subsection and the imple-  
6       mentation of those policies and procedures.”.

○