

111TH CONGRESS  
1ST SESSION

# H. R. 1862

To cap the emissions of greenhouse gases through a requirement to purchase carbon permits, to distribute the proceeds of such purchases to eligible individuals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2009

Mr. VAN HOLLEN (for himself, Mr. THOMPSON of California, Mr. BLUMENAUER, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To cap the emissions of greenhouse gases through a requirement to purchase carbon permits, to distribute the proceeds of such purchases to eligible individuals, 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 “Cap and Dividend Act  
5 of 2009”.

1 **SEC. 2. AUCTION OF CARBON PERMITS AND DISTRIBUTION**  
 2 **OF CONSUMER DIVIDENDS.**

3 (a) IN GENERAL.—The Internal Revenue Code of  
 4 1986 is amended by adding at the end the following new  
 5 subtitle:

6 **“Subtitle L—Auction of Carbon**  
 7 **Permits and Distribution of**  
 8 **Consumer Dividends**

“Chapter 101. Cap and Dividend Program Rules.

“Chapter 102. Consumer Dividends.

“Chapter 103. Border Adjustments.

9 **“CHAPTER 101—CAP AND DIVIDEND**  
 10 **PROGRAM RULES**

“Sec. 9901. Definitions.

“Sec. 9902. Carbon permits.

“Sec. 9903. Auctions.

“Sec. 9904. Compliance obligation.

“Sec. 9905. Penalty for noncompliance.

“Sec. 9906. Carbon capture and sequestration.

“Sec. 9907. Trading.

“Sec. 9908. Banking and borrowing.

11 **“SEC. 9901. DEFINITIONS.**

12 “For purposes of this subtitle:

13 “(1) ADMINISTRATOR.—The term ‘Adminis-  
 14 trator’ means the Administrator of the Environ-  
 15 mental Protection Agency.

16 “(2) CARBON PERMIT.—The term ‘carbon per-  
 17 mit’ means a carbon permit established by the Sec-  
 18 retary under section 9902(a).

1           “(3) COVERED ENTITY.—The term ‘covered en-  
2           tity’ means a person who makes the first sale in  
3           United States markets of a covered fuel, as deter-  
4           mined by the Secretary, in consultation with the Ad-  
5           ministrator.

6           “(4) COVERED FUEL.—The term ‘covered fuel’  
7           means oil, natural gas, coal, or any other product  
8           derived therefrom for use as a combustible fuel of-  
9           fered for sale in United States markets.

10          “(5) FAIR MARKET VALUE.—The term ‘fair  
11          market value’ means the average auction price for  
12          carbon permits during the 4 quarters immediately  
13          preceding a failure to surrender, when required  
14          under section 9904, the required number of carbon  
15          permits under such section.

16          “(6) STATE.—The term ‘State’ means the sev-  
17          eral States, the District of Columbia, the Common-  
18          wealth of Puerto Rico, the United States Virgin Is-  
19          lands, Guam, American Samoa, the Commonwealth  
20          of the Northern Mariana Islands, and any other  
21          commonwealth, territory, or possession of the United  
22          States.

23          “(7) VINTAGE YEAR.—The term ‘vintage year’  
24          means the calendar year for which a carbon permit  
25          is established under section 9902.

1 **“SEC. 9902. CARBON PERMITS.**

2       “(a) IN GENERAL.—The Secretary, in consultation  
3 with the Administrator, shall establish a separate quantity  
4 of carbon permits for calendar year 2012 and each cal-  
5 endar year thereafter, as set forth under subsection (b).

6       “(b) EMISSIONS REDUCTION SCHEDULE.—

7           “(1) IN GENERAL.—The quantity of carbon  
8 permits established by the Secretary, in consultation  
9 with the Administrator, under subsection (a) shall  
10 represent equal, pro rata increments that meet the  
11 targets described in paragraph (2).

12           “(2) TARGETS.—

13           “(A) INITIAL TARGET.—The quantity of  
14 carbon permits established for 2012 shall be  
15 equal to the number of metric tons of carbon  
16 dioxide emitted in the United States in 2005.

17           “(B) DECADAL TARGETS.—The quantity  
18 of carbon permits established for—

19           “(i) 2020 shall be equal to 25 percent  
20 less than the number of metric tons of car-  
21 bon dioxide emitted in the United States in  
22 2005;

23           “(ii) 2030 shall be equal to 45 percent  
24 less than the number of metric tons of car-  
25 bon dioxide emitted in the United States in  
26 2005;

1           “(iii) 2040 shall be equal to 65 per-  
2           cent less than the number of metric tons  
3           of carbon dioxide emitted in the United  
4           States in 2005; and

5           “(iv) 2050 shall be equal to 85 per-  
6           cent less than the number of metric tons  
7           of carbon dioxide emitted in the United  
8           States in 2005.

9           “(3) REPORT.—The Secretary shall report to  
10          Congress if the Secretary, after consultation with  
11          the Administrator, determines the emissions reduc-  
12          tions targets under this subsection should be revised  
13          in order to avert catastrophic climate impacts. Such  
14          report shall include recommended revisions to the  
15          existing emissions reduction schedule and the basis  
16          for those recommendations.

17          “(c) IDENTIFICATION NUMBERS.—The Secretary  
18          shall assign to each carbon permit established under sub-  
19          section (a) a unique identification number that includes  
20          the vintage year for that carbon permit.

21          “(d) LEGAL STATUS OF CARBON PERMITS.—

22                  “(1) IN GENERAL.—A carbon permit does not  
23          constitute a property right.

24                  “(2) TERMINATION OR LIMITATION.—Nothing  
25          in this subtitle or any other provision of law shall be

1 construed to limit or alter the authority of the  
2 United States, including the Secretary acting pursu-  
3 ant to statutory authority, to terminate or limit a  
4 carbon permit.

5 “(3) OTHER PROVISIONS UNAFFECTED.—Noth-  
6 ing in this subtitle relating to carbon permits issued  
7 under this section shall affect the application of any  
8 other provision of law to a covered entity, or the re-  
9 sponsibility for a covered entity to comply with any  
10 such provision of law. Regional and State green-  
11 house gas initiatives are not preempted by this sub-  
12 title.

13 “(e) REGULATIONS.—Not later than 24 months after  
14 the date of enactment of this subtitle, the Secretary shall  
15 promulgate regulations to carry out the provisions of this  
16 subtitle.

17 **“SEC. 9903. AUCTIONS.**

18 “(a) PERIODIC AUCTIONS.—The Secretary shall con-  
19 duct periodic public auctions of carbon permits established  
20 under section 9902(a). The Secretary shall conduct at  
21 least 4 such auctions in each year for which carbon per-  
22 mits are established.

23 “(b) AUCTION RULES.—The Secretary shall—

24 “(1) limit auction participation only to owners  
25 of covered entities;

1           “(2) establish a limit on the amount of carbon  
2           permits that can be purchased by the owner of a sin-  
3           gle entity at each auction and an aggregate limit on  
4           the total amount of permits that can be held by the  
5           owner of a single entity at any one time that—

6                   “(A) reflects anticipated sector and partici-  
7                   pant demand;

8                   “(B) prevents speculation, manipulation,  
9                   or hoarding of permits; and

10                   “(C) does not interfere with normal mar-  
11                   ket competition; and

12                   “(3) have the authority to set a minimum per-  
13                   mit price at auction.

14   **“SEC. 9904. COMPLIANCE OBLIGATION.**

15           “(a) IN GENERAL.—Not later than April 1, 2013,  
16           and April 1 of each year thereafter, the owner of a covered  
17           entity shall surrender to the Secretary a quantity of car-  
18           bon permits at least as great as the number of metric tons  
19           of carbon dioxide that the Secretary, in consultation with  
20           the Administrator, determines would be emitted by the  
21           combustion of covered fuels with respect to which the cov-  
22           ered entity made the first sale in United States markets  
23           during the previous calendar year.

24           “(b) EXEMPTION.—The owner of a covered entity  
25           shall not have to surrender a carbon permit for the sale

1 of a covered fuel consumed for a non-emitting use, as de-  
2 fined and verified by the Secretary in consultation with  
3 the Administrator, unless such covered fuel is sold to a  
4 person issued carbon permits under section 9906.

5 **“SEC. 9905. PENALTY FOR NONCOMPLIANCE.**

6 “(a) IN GENERAL.—The owner of any covered entity  
7 that fails for any year to surrender, by the deadline de-  
8 scribed in section 9904, one or more of the carbon permits  
9 due pursuant to such section shall be liable for payment  
10 to the Secretary of a penalty in the amount described in  
11 subsection (b).

12 “(b) AMOUNT.—The amount of a penalty required to  
13 be paid under subsection (a) shall be equal to the product  
14 obtained by multiplying—

15 “(1) the number of carbon permits that the  
16 owner failed to surrender by the deadline; by

17 “(2) 3 times the fair market value of carbon  
18 permits issued for emissions occurring in the cal-  
19 endar year for which the carbon permits were due.

20 “(c) TIMING.—A penalty required under this section  
21 shall be immediately due and payable to the Secretary,  
22 without demand, in accordance with regulations promul-  
23 gated by the Secretary, which shall be issued not later  
24 than 2 years after the date of enactment of this subtitle.



1 “(d) NO EFFECT ON LIABILITY.—A penalty due and  
2 payable by the owner of a covered entity under this section  
3 shall not diminish the liability of the owner for any fine,  
4 penalty, or assessment against the owner for the same vio-  
5 lation under any other provision of law.

6 **“SEC. 9906. CARBON CAPTURE AND SEQUESTRATION.**

7 “The Secretary shall issue, to any person who the  
8 Secretary, in consultation with the Administrator, deter-  
9 mines has safely and verifiably captured and sequestered  
10 carbon dioxide from the combustion of covered fuels in the  
11 United States, carbon permits, in addition to the quantity  
12 of permits established under section 9902(a), in an  
13 amount equivalent to the number of metric tons of carbon  
14 dioxide so captured and sequestered.

15 **“SEC. 9907. TRADING.**

16 “(a) PERMITTED TRANSACTIONS.—The lawful holder  
17 of a carbon permit may—

18 “(1) hold the carbon permit, subject to the lim-  
19 its established by the Secretary under section  
20 9903(b)(2);

21 “(2) sell, exchange, or transfer the carbon per-  
22 mit to the owner of a covered entity consistent with  
23 the limits established by the Secretary under section  
24 9903(b)(2); or

1           “(3) request that the Secretary retire the car-  
2           bon permit.

3           “(b) EFFECTIVENESS OF CARBON PERMIT TRANS-  
4           FERS.—No transfer of a carbon permit shall be effective  
5           until a written certification of the transfer, signed by a  
6           responsible official of the transferor, is received and re-  
7           corded by the Secretary in accordance with regulations  
8           promulgated under section 9902(e).

9           “(c) CARBON PERMIT TRACKING SYSTEM.—The reg-  
10          ulations promulgated under section 9902(e) shall include  
11          a system for issuing, recording, holding, and tracking car-  
12          bon permits that shall specify all necessary procedures and  
13          requirements for an orderly and competitive functioning  
14          of the carbon permit system. Such regulations shall pro-  
15          vide for appropriate publication of the information in the  
16          system on the Internet.

17          **“SEC. 9908. BANKING AND BORROWING.**

18          “(a) BANKING.—A carbon permit may be used to  
19          meet the compliance obligation requirements of section  
20          9904 for emissions in—

21                  “(1) the vintage year for the carbon permit; or

22                  “(2) any calendar year subsequent to the vin-  
23          tage year for the carbon permit.

24          “(b) EXPIRATION.—A carbon permit shall not expire  
25          unless—

1           “(1) it is surrendered to the Secretary under  
2           section 9904 or section 9907(a)(3); or

3           “(2) the Secretary determines by regulation  
4           that expiration is necessary to ensure the authen-  
5           ticity and integrity of carbon permits or the carbon  
6           permit tracking system.

7           “(c) BORROWING FUTURE VINTAGE YEAR CARBON  
8           PERMITS.—If the auction price for carbon permits in-  
9           creases by more than 100 percent above the average auc-  
10          tion price for carbon permits during the preceding two  
11          years (or, if before the third year for which auctions are  
12          conducted, the average auction price for carbon permits  
13          during the preceding auctions), the Secretary shall auction  
14          as many additional carbon permits as are necessary to sta-  
15          bilize the auction price, not to exceed 8 percent of the total  
16          amount of carbon permits otherwise available at that auc-  
17          tion. Any carbon permits made available under this sub-  
18          section shall result in an equivalent reduction in the aggre-  
19          gate amount of carbon permits made available in vintage  
20          years 2030 through 2050 as set forth in section 9902, and  
21          the Secretary shall reduce the number of carbon permits  
22          by an equal percentage in each of those vintage years.

23          **“CHAPTER 102—CONSUMER DIVIDENDS**

“Sec. 9911. Healthy Climate Trust Fund.

“Sec. 9912. Consumer Dividend payment.

“Sec. 9913. Transparency.

1 **“SEC. 9911. HEALTHY CLIMATE TRUST FUND.**

2       “(a) ESTABLISHMENT.—There is established in the  
3 Treasury of the United States a trust fund to be known  
4 as the ‘Healthy Climate Trust Fund’, consisting of such  
5 amounts as may be appropriated to such trust fund as  
6 provided for in this section.

7       “(b) TRANSFERS.—

8           “(1) PROCEED AMOUNTS.—There are appro-  
9 priated to the Healthy Climate Trust Fund amounts  
10 equivalent to funds received as proceeds under sec-  
11 tion 9903.

12           “(2) PENALTY AMOUNTS.—There are appro-  
13 priated to the Healthy Climate Trust Fund amounts  
14 equivalent to funds received as penalties under sec-  
15 tion 9905.

16       “(c) EXPENDITURES.—

17           “(1) ADMINISTRATIVE EXPENSES.—Such  
18 amounts as may be necessary from the Healthy Cli-  
19 mate Trust Fund shall be available to pay the ad-  
20 ministrative expenses necessary to carry out this sec-  
21 tion for each month, but not exceeding 0.50 percent  
22 of the amounts appropriated to such trust fund  
23 under subsection (b) in such month.

24           “(2) CONSUMER DIVIDEND PAYMENTS.—  
25 Amounts in the Healthy Climate Trust Fund not  
26 used under paragraph (1) for any month shall be

1 available for making Consumer Dividend payments  
2 under section 9912.

3 **“SEC. 9912. CONSUMER DIVIDEND PAYMENTS.**

4 “(a) IN GENERAL.—For purposes of this section:

5 “(1) CONSUMER DIVIDEND PAYMENT.—The  
6 term ‘Consumer Dividend payment’ means the indi-  
7 vidual pro-rata share, as determined by the Sec-  
8 retary, of amounts available for any month in the  
9 Healthy Climate Trust Fund under section  
10 9911(e)(2). For purposes of the preceding sentence,  
11 the amounts available for any month shall be the  
12 fraction of the total amount made available from an  
13 auction conducted under section 9903—

14 “(A) the numerator of which is 1, and

15 “(B) the denominator of which is the num-  
16 ber of months in the period beginning with the  
17 month in which such auction is conducted and  
18 ending with the month before the month in  
19 which the next such auction is scheduled to be  
20 conducted.

21 “(2) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
22 individual’ means, with respect to any month, any  
23 individual with a valid social security number (other  
24 than a nonresident alien individual) who is lawfully  
25 present in the United States for such month, as de-

1       terminated and verified by the Secretary in consulta-  
2       tion with any other Federal entity the Secretary de-  
3       termines appropriate.

4       “(b) PAYMENT OF CONSUMER DIVIDEND.—From  
5       amounts made available under section 9911(c)(2), the  
6       Secretary shall make a Consumer Dividend payment not  
7       later than the end of the month after the month in which  
8       such amounts are appropriated to the Healthy Climate  
9       Trust Fund under section 9911 to each individual who  
10      is an eligible individual for that month.

11      “(c) REGULATIONS.—The Secretary shall prescribe  
12      such regulations and other guidance as may be necessary  
13      or appropriate to carry out this section.

14      **“SEC. 9913. TRANSPARENCY.**

15      “(a) REPORT TO CONGRESS.—Not later than Feb-  
16      ruary 1, 2013, and at least annually thereafter, the Sec-  
17      retary shall transmit to Congress a report accounting for  
18      the disposition of amounts in the Healthy Climate Trust  
19      Fund in the previous calendar year.

20      “(b) HEALTHY CLIMATE TRUST FUND WEBSITE.—  
21      Not later than 90 days after the date of the enactment  
22      of this subtitle, the Secretary shall establish and maintain  
23      a website to provide the public with information on the  
24      disposition of any amounts in the Healthy Climate Trust  
25      Fund.

1    **“CHAPTER 103—BORDER ADJUSTMENTS**

“Sec. 9921. Carbon equivalency fee.

“Sec. 9922. Definitions.

“Sec. 9923. Sense of Congress.

2    **“SEC. 9921. CARBON EQUIVALENCY FEE.**

3           “(a) IMPORTS.—The Secretary shall impose carbon  
4    equivalency fees to be collected by the Commissioner re-  
5    sponsible for U.S. Customs and Border Control on imports  
6    of carbon-intensive goods. The amount of the carbon  
7    equivalency fee shall be equal to the cost that domestic  
8    producers of a comparable carbon-intensive good incur as  
9    a result of—

10           “(1) prices paid in the acquisition of carbon  
11    permits by covered entities under this subtitle; and

12           “(2) carbon equivalency fees paid by importers  
13    of carbon-intensive goods used in the production of  
14    the comparable carbon-intensive good.

15           “(b) PAYMENTS TO EXPORTERS.—The Secretary  
16    shall pay without interest to persons exporting from the  
17    United States carbon-intensive goods produced in the  
18    United States. The amount of the payment shall be equal  
19    to the cost that domestic producers of the carbon-intensive  
20    good incur as a result of—

21           “(1) prices paid in the acquisition of carbon  
22    permits by covered entities under this subtitle; and

1           “(2) carbon equivalency fees paid by importers  
2           of carbon-intensive goods used in the production of  
3           the comparable carbon-intensive good.

4           “(c) EXPIRATION.—This section shall cease to have  
5 effect at such time as and to the extent that—

6           “(1) an international agreement requiring coun-  
7           tries that emit greenhouse gases and produce car-  
8           bon-intensive goods for export markets to adopt  
9           equivalent measures comes into effect; or

10           “(2) the country of export has implemented  
11           equivalent measures, as determined by the Sec-  
12           retary, in consultation with the Secretary of State.

13 **“SEC. 9922. DEFINITIONS.**

14           “In this chapter:

15           “(1) CARBON-INTENSIVE GOOD.—The term  
16           ‘carbon-intensive good’ means a good that, as identi-  
17           fied by the Secretary, in consultation with the Ad-  
18           ministrator, by rule—

19                   “(A) is a primary product; or

20                   “(B) is a manufactured item in which one  
21                   or more primary products are inputs and the  
22                   cost of production of which in the United States  
23                   is significantly increased by reason of the re-  
24                   quirements under this subtitle.



1           “(2) PRIMARY PRODUCT.—The term ‘primary  
2 product’ means—

3           “(A) iron, steel, steel mill products (includ-  
4 ing pipe and tube), aluminum, cement, glass  
5 (including flat, container, and specialty glass  
6 and fiberglass), pulp, paper, chemicals, or in-  
7 dustrial ceramics; and

8           “(B) any other manufactured product that  
9 the Secretary, in consultation with the Adminis-  
10 trator, determines—

11           “(i) is sold for purposes of further  
12 manufacture; and

13           “(ii) generates, in the course of the  
14 manufacture of the product, direct and in-  
15 direct greenhouse gas emissions that are  
16 comparable (on an emissions-per-dollar of  
17 output basis) to emissions generated in the  
18 manufacture or production of a primary  
19 product identified in subparagraph (A).

20           “(3) EQUIVALENT MEASURE.—The term ‘equiv-  
21 alent measure’ means a tax, or other regulatory re-  
22 quirement that imposes a cost, on manufacturers of  
23 carbon-intensive goods located outside the United  
24 States, by reason of greenhouse gas emissions in the  
25 production of such goods by such manufacturers, ap-

1 proximately equal to the cost imposed by this sub-  
 2 title on manufacturers of comparable carbon-inten-  
 3 sive goods located in the United States.

4 **“SEC. 9923. SENSE OF CONGRESS.**

5 “It is the sense of Congress that the United States  
 6 should work proactively under the United Nations Frame-  
 7 work Convention on Climate Change and in other appro-  
 8 priate fora, to establish binding agreements committing all  
 9 major greenhouse gas emitting countries and countries  
 10 with globally competitive producers of carbon-intensive  
 11 goods to contribute equitably to the reduction of global  
 12 greenhouse gas emissions.”.

13 (b) CLERICAL AMENDMENT.—The table of subtitles  
 14 for the Internal Revenue Code of 1986 is amended by add-  
 15 ing at the end the following new item:

“Subtitle L. Auction of Carbon Permits and Distribution of Consumer  
 Dividends.”.

16 **SEC. 3. DISCLOSURE OF INFORMATION.**

17 (a) LIMITED DISCLOSURE OF IDENTITY.—Subsection  
 18 (l) of section 6103 of the Internal Revenue Code of 1986  
 19 is amended by adding at the end the following new para-  
 20 graph:

21 “(21) LIMITED DISCLOSURE OF IDENTITY IN-  
 22 FORMATION RELATING TO CONSUMER DIVIDEND  
 23 PAYMENTS.—

1           “(A) DEPARTMENT OF THE TREASURY.—  
2           Individual identity information shall, without  
3           written request, be open to inspection by or dis-  
4           closure to officers and employees of the Depart-  
5           ment of the Treasury whose official duties re-  
6           quire such inspection or disclosure for purposes  
7           of section 9912.

8           “(B) COMMISSIONER OF SOCIAL SECUR-  
9           RITY.—The Commissioner of Social Security  
10          shall, on written request, disclose to officers  
11          and employees of the Department of the Treas-  
12          ury individual identity information which has  
13          been disclosed to the Social Security Adminis-  
14          tration as provided by paragraph (1) or (5).

15          “(C) RESTRICTION ON DISCLOSURE.—In-  
16          formation disclosed under this paragraph shall  
17          be disclosed only for purposes of, and to the ex-  
18          tent necessary in, carrying out section 9912.”.

19          (b)        CONFORMING        AMENDMENTS.—Section  
20          6103(p)(3)(A) of the Internal Revenue Code of 1986 is  
21          amended by striking “or (18)” and inserting “, (18), or  
22          (21)”.

1 **SEC. 4. EFFECTIVE DATE.**

2       The amendments made by this Act shall take effect  
3 on the date of the enactment of this Act.

○