

AMENDMENT NO.

Calendar No.

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

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

**H. R. 6867**

To provide for additional emergency unemployment compensation.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEVIN (for himself, Mr. BOND, Ms. STABENOW, Mr. VOINOVICH, Mr. BROWN, Mr. SPECTER, and Mr. CASEY)

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. \_\_\_\_ . AUTO INDUSTRY EMERGENCY BRIDGE LOAN**
- 3 **PROGRAM.**
- 4 (a) PROGRAM PROVISIONS.—
- 5 (1) IN GENERAL.—On or before March 31,
- 6 2009, the Secretary shall make loans from funds
- 7 provided under this section to automobile manufac-
- 8 turers or component suppliers that have—

1           (A) operations in the United States, the  
2           failure of which would have a systemic adverse  
3           effect on the overall United States economy or  
4           a significant loss of United States jobs, as de-  
5           termined by the Secretary;

6           (B) operated a manufacturing facility for  
7           the purposes of producing automobiles or auto-  
8           mobile components in the United States  
9           throughout the 20-year period ending on the  
10          date of enactment of this Act; and

11          (C) submitted a complete application for a  
12          loan under this section pursuant to subsection  
13          (c)(1), which has been determined eligible under  
14          subsection (c)(2).

15          (b) PLAN TO ENSURE FINANCIAL VIABILITY OF BOR-  
16          ROWER.—

17           (1) IN GENERAL.—At the time of application  
18           for a loan under this section, an automobile manu-  
19           facturer or component supplier shall submit to the  
20           Secretary a detailed plan on how the Government  
21           funds requested will be utilized to ensure the finan-  
22           cial viability of the company, and how such funds  
23           will stimulate automobile production in the United  
24           States and improve the capacity of the company to

1       pursue the timely and aggressive production of en-  
2       ergy-efficient advanced technology vehicles.

3               (2) PLAN CONTENTS.—A plan submitted under  
4       this section shall detail cost control measures and  
5       performance goals and milestones.

6       (c) APPLICATIONS, ELIGIBILITY AND DISBURSE-  
7       MENTS.—

8               (1) APPLICATIONS.—On and after the date that  
9       is 3 days after the date of enactment of this Act, the  
10       Secretary shall accept applications for loans under  
11       this section.

12              (2) DETERMINATION OF ELIGIBILITY.—Not  
13       later than 15 days after the date on which the Sec-  
14       retary receives a complete application for a loan  
15       under this section, the Secretary shall, after con-  
16       sultation with other Executive Branch officials, de-  
17       termine whether—

18                   (A) the applicant meets the requirements  
19                   under subsections (a) and (b);

20                   (B) the disbursement of funds and the suc-  
21                   cessful implementation of the required plan  
22                   would ensure the financial viability of the appli-  
23                   cant; and

24                   (C) the applicant is therefore eligible to re-  
25                   ceive a loan under this section.

1           (3) DISBURSEMENT.—The Secretary shall begin  
2           disbursement of the proceeds of a loan under this  
3           section to an eligible applicant not later than 7 days  
4           after the date on which the Secretary receives a dis-  
5           bursal request from the applicant.

6           (d) WARRANTS AND DEBT INSTRUMENTS.—The Sec-  
7           retary may not make a loan under this section unless the  
8           Secretary receives from the automobile manufacturer or  
9           component supplier a warrant or senior debt instrument  
10          from the manufacturer made in accordance with the re-  
11          quirements for a warrant or senior debt instrument by a  
12          financial institution under section 113(d) of the Emer-  
13          gency Economic Stabilization Act of 2008 (division A of  
14          Public Law 110–343).

15          (e) REPLENISHMENT OF ADVANCED TECHNOLOGY  
16          VEHICLE MANUFACTURING INCENTIVE PROGRAM.—

17               (1) EQUITY SALES.—

18                   (A) SALES AUTHORIZED.—The Secretary  
19                   may sell, exercise, or surrender any equity in-  
20                   strument received under this section.

21                   (B) TURNAROUND PROFITS TO RESTORE  
22                   ADVANCED VEHICLES MANUFACTURING INCEN-  
23                   TIVE PROGRAM.—All proceeds received from a  
24                   sale, exercise, or surrender under subparagraph  
25                   (A) may be credited to the appropriate Govern-

1           ment financing account made available to fulfill  
2           the advanced technology vehicle manufacturing  
3           incentive purpose under section 136 of the En-  
4           ergy Independence and Security Act of 2007  
5           (Public Law 110-140; 42 U.S.C. 17013) until  
6           the amount loaned under this section has been  
7           repaid.

8           (C) REDUCTION OF PUBLIC DEBT.—All  
9           proceeds received from a sale, exercise, or sur-  
10          render under subparagraph (A) that takes place  
11          after the amount loaned under this section has  
12          been repaid in accordance with subparagraph  
13          (B) shall be used to reduce the public debt.

14          (2) REPAID LOAN FUNDS.—

15           (A) IN GENERAL.—Loan amounts repaid  
16           under this section may be credited to the appro-  
17           priate Government financing account made  
18           available to fulfill the advanced technology vehi-  
19           cle manufacturing incentive purpose of section  
20           136 of the Energy Independence and Security  
21           Act of 2007 until the amount loaned under this  
22           section is repaid.

23           (B) REDUCTION OF PUBLIC DEBT.—Loan  
24           amounts repaid under this section after the

1 amount loaned under this section has been re-  
2 paid shall be used to reduce the public debt.

3 (f) LIMITS ON EXECUTIVE COMPENSATION.—

4 (1) STANDARDS REQUIRED.—The Secretary  
5 shall require any recipient of a loan under this sec-  
6 tion to meet appropriate standards for executive  
7 compensation and corporate governance.

8 (2) SPECIFIC REQUIREMENTS.—The standards  
9 established under paragraph (1) shall include the  
10 following:

11 (A) Limits on compensation that exclude  
12 incentives for senior executive officers of a re-  
13 cipient of a loan under this section to take un-  
14 necessary and excessive risks that threaten the  
15 value of such recipient during the period that  
16 the loan is outstanding.

17 (B) A provision for the recovery by such  
18 recipient of any bonus or incentive compensa-  
19 tion paid to a senior executive officer based on  
20 statements of earnings, gains, or other criteria  
21 that are later found to be materially inaccurate.

22 (C) A prohibition on such recipient making  
23 any golden parachute payment to a senior exec-  
24 utive officer during the period that the loan  
25 under this section is outstanding.

1           (D) A prohibition on such recipient paying  
2           or accruing any bonus or incentive compensa-  
3           tion during the period that the loan is out-  
4           standing to any executive whose annual base  
5           compensation exceeds \$250,000 (which amount  
6           shall be adjusted by the Secretary for inflation).

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

11          (g) PROHIBITION ON THE USE OF LOAN PROCEEDS  
12 FOR LOBBYING ACTIVITIES.—

13           (1) IN GENERAL.—A recipient of a loan under  
14           this section may not use such funds for any lobbying  
15           expenditures or political contributions.

16           (2) DEFINITIONS.—In this subsection, the fol-  
17           lowing definitions shall apply:

18           (A) LOBBYING EXPENDITURES.—The term  
19           “lobbying expenditures” has the same meaning  
20           as in section 4911(c)(1) of the Internal Rev-  
21           enue Code of 1986.

22           (B) POLITICAL CONTRIBUTIONS.—The  
23           term “political contribution” means any con-  
24           tribution on behalf of a political candidate or to  
25           a separate segregated fund described in section

1           316(b)(2)(C) of the Federal Election Campaign  
2           Act of 1971 (2 U.S.C. 441b(b)(2)(C)).

3           (h) PROHIBITION ON PAYMENT OF DIVIDENDS.—No  
4 common stock dividends may be paid by any recipient of  
5 a loan under this section for the duration of the loan.

6           (i) AUTO INDUSTRY EMERGENCY BRIDGE LOAN  
7 OVERSIGHT BOARD.—

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

14                   (A) the progress of the applicant in meet-  
15 ing the performance goals and milestones under  
16 its financial viability plan under subsection (b);

17                   (B) recommending changes, as necessary  
18 and appropriate, to the Secretary in meeting  
19 the goals and milestones under the financial vi-  
20 ability plan, and senior management and board  
21 of directors to the automobile manufacturers  
22 and component suppliers assisted under this  
23 section; and

24                   (C) reporting any suspected fraud, mis-  
25 representation, or malfeasance to the Inspector

1           General of the Department of Commerce or the  
2           Attorney General of the United States, con-  
3           sistent with section 535(b) of title 28, United  
4           States Code.

5           (2) MEMBERSHIP.—The Board shall be com-  
6           prised of—

7                   (A) the Secretary of Commerce;

8                   (B) the Secretary of Energy;

9                   (C) the Secretary of Transportation;

10                  (D) the Secretary of the Treasury;

11                  (E) the Secretary of Labor; and

12                  (F) the Administrator of the Environ-  
13                  mental Protection Agency.

14           (3) CHAIRPERSON.—The chairperson of the  
15           Board shall be the Secretary of Commerce.

16           (4) MEETINGS.—The Board shall meet 2 weeks  
17           after the first disbursement of funds provided under  
18           this section, and as necessary, but not less than  
19           monthly, thereafter.

20           (5) REPORTS.—The Board shall report to the  
21           appropriate committees of Congress, not less fre-  
22           quently than quarterly, on the matters described  
23           under this subsection.

24           (6) OVERSIGHT OF TRANSACTIONS AND FINAN-  
25           CIAL CONDITION.—

1 (A) DUTY TO INFORM.—During the period  
2 in which any loan extended under this section  
3 remains outstanding, the recipient of such loan  
4 shall promptly inform the Secretary and the  
5 Board of—

6 (i) any asset sale or investment or  
7 commitment for same proposed to be en-  
8 tered into by such recipient that has a  
9 value in excess of \$25,000,000; and

10 (ii) any other material change in the  
11 financial condition of such recipient.

12 (B) AUTHORITY OF THE SECRETARY.—  
13 During the period in which any loan extended  
14 under this section remains outstanding, the  
15 Secretary, in consultation with the Board,  
16 may—

17 (i) promptly review any asset sale or  
18 investment described in subparagraph (A)  
19 or any commitment for such asset sale or  
20 investment; and

21 (ii) direct the recipient of the loan  
22 that it should not consummate such pro-  
23 posed sale or investment or commitment  
24 for the same.

1                   (C) REGULATIONS.—The Board may es-  
2                   tablish, by regulation, procedures for con-  
3                   ducting any review under this paragraph.

4                   (7) TERMINATION.—The Board, and its author-  
5                   ity under this subsection, shall terminate not later  
6                   than 6 months after the date of repayment of the  
7                   last loan amounts under this section.

8                   (j) PRIORITIZATION OF LOAN ALLOCATIONS.—In al-  
9                   locating loan amounts under this section, the Secretary  
10                  shall consider the magnitude of the impact of the manu-  
11                  facturing operations of the applicant in the United States  
12                  on the overall economy of the United States and other seg-  
13                  ments of the automobile industry, including the impact on  
14                  levels of employment, domestic manufacturing of auto-  
15                  mobiles and automobile components, and automobile deal-  
16                  erships.

17                  (k) RATE OF INTEREST.—The annual rate of interest  
18                  for a loan under this section shall be—

19                    (1) 5 percent during the 5-year period begin-  
20                    ning on the date on which the Secretary disburses  
21                    the loan; and

22                    (2) 9 percent after the end of the period de-  
23                    scribed in paragraph (1).

1 (l) NO PREPAYMENT PENALTY.—A loan made under  
2 this section shall be prepayable without penalty at any  
3 time.

4 (m) DISCHARGE.—A discharge under title 11, United  
5 States Code, shall not discharge the borrower from any  
6 debt for funds authorized to be disbursed under this sec-  
7 tion.

8 (n) FEES.—

9 (1) IN GENERAL.—The Secretary may charge  
10 and collect fees for disbursements under this section  
11 in amounts that the Secretary determines are suffi-  
12 cient to cover applicable administrative expenses.

13 (2) AVAILABILITY.—Fees collected under this  
14 subsection shall—

15 (A) be deposited by the Secretary into the  
16 Treasury of the United States;

17 (B) be used by the Secretary to pay ad-  
18 ministrative expenses of making awards and  
19 loans under this section; and

20 (C) remain available until expended, with-  
21 out further appropriation.

22 (o) JUDICIAL REVIEW AND RELATED MATTERS.—

23 (1) STANDARDS.—Actions by the Secretary  
24 pursuant to the authority of this section shall be  
25 subject to chapter 7 of title 5, United States Code,

1 including that such final actions shall be held unlaw-  
2 ful and set aside if found to be arbitrary, capricious,  
3 an abuse of discretion, or not in accordance with  
4 law.

5 (2) LIMITATIONS ON EQUITABLE RELIEF.—

6 (A) INJUNCTION.—No injunction or other  
7 form of equitable relief shall be issued against  
8 the Secretary for actions pursuant to this sec-  
9 tion, other than to remedy a violation of the  
10 Constitution.

11 (B) TEMPORARY RESTRAINING ORDER.—

12 Any request for a temporary restraining order  
13 against the Secretary for actions pursuant to  
14 this section shall be considered and granted or  
15 denied by the court within 3 days of the date  
16 of the request.

17 (C) PRELIMINARY INJUNCTION.—Any re-

18 quest for a preliminary injunction against the  
19 Secretary for actions pursuant to this section  
20 shall be considered and granted or denied by  
21 the court on an expedited basis consistent with  
22 the provisions of rule 65(b)(3) of the Federal  
23 Rules of Civil Procedure, or any successor  
24 thereto.

1 (D) PERMANENT INJUNCTION.—Any re-  
2 quest for a permanent injunction against the  
3 Secretary for actions pursuant to this section  
4 shall be considered and granted or denied by  
5 the court on an expedited basis. Whenever pos-  
6 sible, the court shall consolidate trial on the  
7 merits with any hearing on a request for a pre-  
8 liminary injunction, consistent with the provi-  
9 sions of rule 65(a)(2) of the Federal Rules of  
10 Civil Procedure, or any successor thereto.

11 (E) LIMITATION ON ACTIONS BY PARTICI-  
12 PATING COMPANIES.—No action or claims may  
13 be brought against the Secretary by any person  
14 that divests its assets with respect to its partici-  
15 pation in a program under this section, except  
16 as provided in subparagraph (A), other than as  
17 expressly provided in a written contract with  
18 the Secretary.

19 (F) STAYS.—Any injunction or other form  
20 of equitable relief issued against the Secretary  
21 for actions pursuant to this section shall be  
22 automatically stayed. The stay shall be lifted,  
23 unless the Secretary seeks a stay from a higher  
24 court within 3 calendar days after the date on  
25 which the relief is issued.

1           (3) SAVINGS CLAUSE.—Any exercise of the au-  
2           thority of the Secretary pursuant to this subsection  
3           shall not impair the claims or defenses that would  
4           otherwise apply with respect to persons other than  
5           the Secretary.

6           (p) DEFINITIONS.—For purposes of this section, the  
7           following definitions shall apply:

8           (1) AUTOMOBILE MANUFACTURER OR COMPO-  
9           NENT SUPPLIER.—The term “automobile manufac-  
10          turer or component supplier” means an automobile  
11          manufacturer or component supplier or any suc-  
12          cessor thereto.

13          (2) GOLDEN PARACHUTE PAYMENT.—The term  
14          “golden parachute payment” means any payment to  
15          a senior executive officer for departure from a com-  
16          pany for any reason.

17          (3) FINANCIAL VIABILITY.—The term “finan-  
18          cial viability” means, using generally acceptable ac-  
19          counting principles, that there is a reasonable pros-  
20          pect that the applicant will be able to make pay-  
21          ments of principal and interest on the loan as and  
22          when such payments become due under the terms of  
23          the loan documents, and that the applicant has a net  
24          present value that is positive.

1           (4) SECRETARY.—The term “Secretary” means  
2           the Secretary of Commerce.

3           (5) SENIOR EXECUTIVE OFFICER.—The term  
4           “senior executive officer” means an individual who is  
5           1 of the top 5 most highly paid executives of a pub-  
6           lic company, whose compensation is required to be  
7           disclosed pursuant to the Securities Exchange Act of  
8           1934, and any regulations issued thereunder, and  
9           nonpublic company counterparts.

10          (q) FUNDING.—

11           (1) IN GENERAL.—Notwithstanding any other  
12           provision of law, the \$7,500,000,000 appropriated  
13           for fiscal year 2009 for direct loans under section  
14           129 of the Consolidated Security, Disaster Assist-  
15           ance, and Continuing Appropriations Act, 2009 (di-  
16           vision A of Public Law 110–329) is rescinded.

17           (2) APPROPRIATIONS.—There is appropriated  
18           to the Secretary of Commerce \$7,500,000,000 to the  
19           “Department of Commerce – Emergency Bridge  
20           Loan Program Account” for the cost of direct loans  
21           authorized under this section, which shall remain  
22           available until expended. Commitments for direct  
23           loans using such amount shall not exceed  
24           \$25,000,000,000 in total loan principal. The cost of  
25           such direct loans, including the cost of modifying

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

4 (3) TRANSFERS FOR DIRECT LOANS.—Fol-  
5 lowing the receipt of a notice from the Secretary of  
6 Energy certifying the approval of a loan under the  
7 program authorized under section 136 of the Energy  
8 Independence and Security Act of 2007 (Public Law  
9 110–140; 42 U.S.C. 17013), the Secretary may  
10 transfer amounts made available under this section  
11 to the Secretary of Energy, in an amount sufficient  
12 for the cost of the direct loans if such transfer would  
13 not cause the Secretary to exceed the total appro-  
14 priation and total commitment level authorized  
15 under paragraph (2). Any amounts so transferred  
16 shall be available to the Secretary of Energy without  
17 fiscal year limitation and subject to the terms and  
18 conditions described in section 129 of the Consoli-  
19 dated Security, Disaster Assistance, and Continuing  
20 Appropriations Act, 2009.

21 (4) USE OF REMAINING AMOUNTS.—Amounts  
22 appropriated under paragraph (2) which remain  
23 available after March 31, 2009, shall be transferred  
24 to the Secretary of Energy and shall be used to  
25 carry out section 136 of the Energy Independence

1 and Security Act of 2007, subject to the terms and  
2 conditions described in section 129 of the Consoli-  
3 dated Security, Disaster Assistance, and Continuing  
4 Appropriations Act, 2009.

5 (r) COORDINATION WITH OTHER LAWS REGARDING  
6 PROMOTION OF ADVANCED TECHNOLOGY VEHICLE MAN-  
7 UFACTURING.—Nothing in the section may be construed  
8 as altering, affecting, or superseding the provisions of sec-  
9 tion 136 of the Energy Independence and Security Act  
10 of 2007, relating to the technology requirements for en-  
11 ergy efficient vehicles.