

112TH CONGRESS
1ST SESSION

H. R. 3221

To authorize the Secretary of Energy to provide loan guarantees for energy efficiency upgrades to existing buildings.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 14, 2011

Ms. DELAURO (for herself, Mr. CARNAHAN, Ms. WOOLSEY, Mr. COURTNEY, Ms. SCHAKOWSKY, Mr. OLVER, Mr. GRIJALVA, Mr. CONYERS, and Mr. WELCH) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize the Secretary of Energy to provide loan guarantees for energy efficiency upgrades to existing buildings.

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 “Job Creation and En-
5 ergy Efficiency Act”.

1 **SEC. 2. LOAN PROGRAM FOR ENERGY EFFICIENCY UP-**
2 **GRADES TO EXISTING BUILDINGS.**

3 Title XVII of the Energy Policy Act of 2005 (42
4 U.S.C. 16511 et seq.) is amended by adding at the end
5 the following:

6 **“SEC. 1706. BUILDING RETROFIT FINANCING PROGRAM.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) CREDIT SUPPORT.—The term ‘credit sup-
9 port’ means a guarantee or commitment to issue a
10 guarantee or other forms of credit enhancement to
11 ameliorate risks for efficiency obligations.

12 “(2) EFFICIENCY OBLIGATION.—The term ‘effi-
13 ciency obligation’ means a debt or repayment obliga-
14 tion incurred in connection with financing a project,
15 or a portfolio of such debt or repayment obligations.

16 “(3) PROJECT.—The term ‘project’ means the
17 installation and implementation of efficiency, ad-
18 vanced metering, distributed generation, or renew-
19 able energy technologies and measures for a building
20 (or for multiple buildings on a given property) that
21 are expected to increase the energy efficiency of the
22 building (including fixtures) in accordance with cri-
23 teria established by the Secretary.

24 “(b) ELIGIBLE PROJECTS.—

25 “(1) IN GENERAL.—Notwithstanding sections
26 1703 and 1705, the Secretary may provide credit

1 support under this section, in accordance with sec-
2 tion 1702.

3 “(2) INCLUSIONS.—Buildings eligible for credit
4 support under this section include commercial, mul-
5 tifamily residential, industrial, municipal, govern-
6 ment, institution of higher education, school, and
7 hospital facilities that satisfy criteria established by
8 the Secretary.

9 “(c) GUIDELINES.—

10 “(1) IN GENERAL.—Not later than 180 days
11 after the date of enactment of this section, the Sec-
12 retary shall—

13 “(A) establish guidelines for credit support
14 provided under this section;

15 “(B) publish the guidelines in the Federal
16 Register; and

17 “(C) provide for an opportunity for public
18 comment on the guidelines.

19 “(2) REQUIREMENTS.—The guidelines estab-
20 lished by the Secretary under this subsection shall
21 include—

22 “(A) standards for assessing the energy
23 savings that could reasonably be expected to re-
24 sult from a project;

1 “(B) examples of financing mechanisms
2 (and portfolios of such financing mechanisms)
3 that qualify as efficiency obligations;

4 “(C) the threshold levels of energy savings
5 that a project, at the time of issuance of credit
6 support, shall be reasonably expected to achieve
7 to be eligible for credit support;

8 “(D) the eligibility criteria the Secretary
9 determines to be necessary for making credit
10 support available under this section; and

11 “(E) notwithstanding subsections (d)(3)
12 and (g)(2)(B) of section 1702, any lien priority
13 requirements that the Secretary determines to
14 be necessary, in consultation with the Director
15 of the Office of Management and Budget, which
16 may include—

17 “(i) mechanisms to preserve prior lien
18 positions of mortgage lenders and other
19 creditors in buildings eligible for credit
20 support;

21 “(ii) remedies available to the Sec-
22 retary under chapter 176 of title 28,
23 United States Code, in the event of default
24 on the efficiency obligation by the bor-
25 rower; and

1 “(iii) measures to limit the exposure
2 of the Secretary to financial risk in the
3 event of default, such as—

4 “(I) the collection of a credit sub-
5 sidy fee from the borrower as a loan
6 loss reserve, taking into account the
7 limitation on credit support under
8 subsection (d);

9 “(II) minimum debt-to-income
10 levels of the borrower;

11 “(III) minimum levels of value
12 relative to outstanding mortgage or
13 other debt on a building eligible for
14 credit support;

15 “(IV) allowable thresholds for the
16 percent of the efficiency obligation rel-
17 ative to the amount of any mortgage
18 or other debt on an eligible building;

19 “(V) analysis of historic and an-
20 ticipated occupancy levels and rental
21 income of an eligible building;

22 “(VI) requirements of third-party
23 contractors to guarantee energy sav-
24 ings that will result from a retrofit
25 project, and whether financing on the

1 efficiency obligation will amortize
2 from the energy savings;

3 “(VII) requirements that the ret-
4 rofit project incorporate protocols to
5 measure and verify energy savings;
6 and

7 “(VIII) recovery of payments
8 equally by the Secretary and the ret-
9 rofit.

10 “(3) EFFICIENCY OBLIGATIONS.—The financing
11 mechanisms qualified by the Secretary under para-
12 graph (2)(B) may include—

13 “(A) loans, including loans made by the
14 Federal Financing Bank;

15 “(B) power purchase agreements, including
16 energy efficiency power purchase agreements;

17 “(C) energy services agreements, including
18 energy performance contracts;

19 “(D) property assessed clean energy bonds
20 and other tax assessment-based financing mech-
21 anisms;

22 “(E) aggregate on-meter agreements that
23 finance retrofit projects; and

24 “(F) any other efficiency obligations the
25 Secretary determines to be appropriate.

1 “(4) PRIORITIES.—In carrying out this section,
2 the Secretary shall prioritize—

3 “(A) the maximization of energy savings
4 with the available credit support funding;

5 “(B) the establishment of a clear applica-
6 tion and approval process that allows private
7 building owners, lenders, and investors to rea-
8 sonably expect to receive credit support for
9 projects that conform to guidelines;

10 “(C) the distribution of projects receiving
11 credit support under this section across States
12 or geographical regions of the United States;
13 and

14 “(D) projects designed to achieve whole-
15 building retrofits.

16 “(d) LIMITATION.—Notwithstanding section 1702(c),
17 the Secretary shall not issue credit support under this sec-
18 tion in an amount that exceeds—

19 “(1) 90 percent of the principal amount of the
20 efficiency obligation that is the subject of the credit
21 support; or

22 “(2) \$25,000,000 for any single project.

23 “(e) AGGREGATION OF PROJECTS.—To the extent
24 provided in the guidelines developed in accordance with
25 subsection (c), the Secretary may issue credit support on

1 a portfolio, or pool of projects, that are not required to
2 be geographically contiguous, if each efficiency obligation
3 in the pool fulfills the requirements described in this sec-
4 tion.

5 “(f) APPLICATION.—

6 “(1) IN GENERAL.—To be eligible to receive
7 credit support under this section, the applicant shall
8 submit to the Secretary an application at such time,
9 in such manner, and containing such information as
10 the Secretary determines to be necessary.

11 “(2) CONTENTS.—An application submitted
12 under this section shall include assurances by the
13 applicant that—

14 “(A) each contractor carrying out the
15 project meets minimum experience level criteria,
16 including local retrofit experience, as deter-
17 mined by the Secretary;

18 “(B) the project is reasonably expected to
19 achieve energy savings, as set forth in the appli-
20 cation using any methodology that meets the
21 standards described in the program guidelines;

22 “(C) the project meets any technical cri-
23 teria described in the program guidelines;

1 “(D) the recipient of the credit support
2 and the parties to the efficiency obligation will
3 provide the Secretary with—

4 “(i) any information the Secretary re-
5 quests to assess the energy savings that re-
6 sult from the project, including historical
7 energy usage data, a simulation-based
8 benchmark, and detailed descriptions of
9 the building work, as described in the pro-
10 gram guidelines; and

11 “(ii) permission to access information
12 relating to building operations and usage
13 for the period described in the program
14 guidelines; and

15 “(E) any other assurances that the Sec-
16 retary determines to be necessary.

17 “(3) DETERMINATION.—Not later than 90 days
18 after receiving an application, the Secretary shall
19 make a final determination on the application, which
20 may include requests for additional information.

21 “(g) FEES.—

22 “(1) IN GENERAL.—In addition to the fees re-
23 quired by section 1702(h)(1), the Secretary may
24 charge reasonable fees for credit support provided
25 under this section.

1 “(2) AVAILABILITY.—Fees collected under this
2 section shall be subject to section 1702(h)(2).

3 “(h) UNDERWRITING.—The Secretary may delegate
4 the underwriting activities under this section to 1 or more
5 entities that the Secretary determines to be qualified.

6 “(i) STATUS REPORT.—Not later than 1 year after
7 commencement of the program, the Secretary shall submit
8 to the Congress a report that describes in reasonable de-
9 tail—

10 “(1) the manner in which this section is being
11 carried out;

12 “(2) the number and type of projects sup-
13 ported;

14 “(3) the types of funding mechanisms used to
15 provide credit support to projects;

16 “(4) the energy savings expected to result from
17 projects supported by this section;

18 “(5) any tracking efforts the Secretary is using
19 to calculate the actual energy savings produced by
20 the projects; and

21 “(6) any plans to improve the tracking efforts
22 described in paragraph (5).

23 “(j) BUY AMERICAN REPORT.—The Secretary shall
24 submit to the Congress an annual report that estimates

1 the percentage of American-made materials used in con-
2 ducting retrofit activities funded pursuant to this section.

3 “(k) FUNDING.—

4 “(1) AUTHORIZATION OF APPROPRIATIONS.—

5 There are authorized to be appropriated to carry out
6 this section \$15,000,000,000 for the period encom-
7 passing fiscal years 2012 through 2021.

8 “(2) ADMINISTRATIVE COSTS.—Not more than

9 1 percent of any amounts made available to the Sec-
10 retary for carrying out this section may be used by
11 the Secretary for administrative costs incurred in
12 carrying out this section.”.

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