

Calendar No. 127

112TH CONGRESS
1ST SESSION**S. 1510****[Report No. 112-47]**

To promote the domestic development and deployment of clean energy technologies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 30 (legislative day, AUGUST 2), 2011

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, reported under authority of the order of the Senate of August 2, 2011, the following original bill; which was read twice and placed on the calendar

A BILL

To promote the domestic development and deployment of clean energy technologies, 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 “Clean Energy Financ-
5 ing Act of 2011”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to promote the domestic
3 development and deployment of clean energy technologies
4 required for the 21st century through the improvement of
5 existing programs and the establishment of a Clean En-
6 ergy Deployment Administration that will provide for an
7 attractive investment environment through partnership
8 with and support of the private capital market in order
9 to promote access to affordable financing for accelerated
10 and widespread deployment of—

11 (1) clean energy technologies, especially break-
12 through technologies;

13 (2) advanced or enabling energy infrastructure
14 technologies;

15 (3) energy efficiency and clean distributed en-
16 ergy technologies in residential, commercial, and in-
17 dustrial applications, including end-use efficiency in
18 buildings; and

19 (4) manufacturing technologies for any of the
20 technologies or applications described in this section.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) **ADMINISTRATION.**—The term “Administra-
24 tion” means the Clean Energy Deployment Adminis-
25 tration established by section 7.

1 (2) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Administra-
3 tion.

4 (3) ADVISORY COUNCIL.—The term “Advisory
5 Council” means the Energy Technology Advisory
6 Council of the Administration.

7 (4) BREAKTHROUGH TECHNOLOGY.—The term
8 “breakthrough technology” means a clean energy
9 technology or clean distributed energy technology
10 that—

11 (A) presents a significant opportunity to
12 advance the goals developed under section 6, as
13 assessed under the methodology established by
14 the Advisory Council; but

15 (B)(i) has generally not been considered a
16 commercially ready technology as a result of
17 high perceived technology risk or other similar
18 factors; or

19 (ii) faces market barriers to widespread
20 adoption in the residential or commercial mar-
21 kets, including a lack of financing availability to
22 overcome upfront capital costs despite the op-
23 portunity for reasonable payback timeframes.

24 (5) CLEAN DISTRIBUTED ENERGY.—The term
25 “clean distributed energy” means any electric gen-

1 eration or thermal energy production technology
2 that—

3 (A) produces less than 10 megawatts or 10
4 megawatts thermal equivalent;

5 (B) meets the criteria for clean energy
6 technology described in paragraph (6); and

7 (C) is located at a retail customer site and
8 provides energy directly, at least in part, to a
9 retail customer.

10 (6) CLEAN ENERGY TECHNOLOGY.—The term
11 “clean energy technology” means a technology or
12 service related to the production, use, transmission,
13 storage, control, or conservation of energy that
14 will—

15 (A) reduce the need for additional energy
16 supplies by using existing energy supplies with
17 greater efficiency or by transmitting, distrib-
18 uting, storing, or transporting energy with
19 greater effectiveness in or through the infra-
20 structure of the United States;

21 (B) diversify the sources of energy supply
22 of the United States to strengthen energy secu-
23 rity and to increase supplies with a favorable
24 balance of environmental effects if the entire
25 technology system is considered; or

1 (C) contribute to a stabilization of atmos-
2 pheric greenhouse gas concentrations through
3 reduction, avoidance, or sequestration of en-
4 ergy-related emissions.

5 (7) COST.—The term “cost” has the meaning
6 given the term in section 502 of the Federal Credit
7 Reform Act of 1990 (2 U.S.C. 661a).

8 (8) DIRECT LOAN.—The term “direct loan” has
9 the meaning given the term in section 502 of the
10 Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

11 (9) FUND.—The term “Fund” means the Clean
12 Energy Investment Fund established by section 4(a).

13 (10) LOAN GUARANTEE.—The term “loan guar-
14 antee” has the meaning given the term in section
15 502 of the Federal Credit Reform Act of 1990 (2
16 U.S.C. 661a).

17 (11) NATIONAL LABORATORY.—The term “Na-
18 tional Laboratory” has the meaning given the term
19 in section 2 of the Energy Policy Act of 2005 (42
20 U.S.C. 15801).

21 (12) SECRETARY.—The term “Secretary”
22 means the Secretary of Energy.

23 (13) SECURITY.—The term “security” has the
24 meaning given the term in section 2 of the Securities
25 Act of 1933 (15 U.S.C. 77b).

1 (14) STATE.—The term “State” means—

2 (A) a State;

3 (B) the District of Columbia;

4 (C) the Commonwealth of Puerto Rico;

5 and

6 (D) any other territory or possession of the

7 United States.

8 (15) TECHNOLOGY RISK.—The term “tech-
9 nology risk” means the risks during construction or
10 operation associated with the design, development,
11 and deployment of clean energy technologies (includ-
12 ing the cost, schedule, performance, reliability and
13 maintenance, and accounting for the perceived risk),
14 from the perspective of commercial lenders, that
15 may be increased as a result of the absence of ade-
16 quate historical construction, operating, or perform-
17 ance data from commercial applications of the tech-
18 nology.

19 **SEC. 4. CLEAN ENERGY INVESTMENT FUND.**

20 (a) ESTABLISHMENT.—There is established in the
21 Treasury of the United States a fund, to be known as the
22 “Clean Energy Investment Fund”, consisting of—

23 (1) such amounts as have been appropriated to
24 carry out title XVII of the Energy Policy Act of
25 2005 (42 U.S.C. 16511 et seq.);

1 (2) such amounts as are deposited in the Fund
2 under this Act and amendments made by this Act;
3 and

4 (3) such sums as may be appropriated to sup-
5 plement the Fund.

6 (b) EXPENDITURES FROM FUND.—

7 (1) IN GENERAL.—Amounts in the Fund shall
8 be available to the Secretary or Administrator for
9 obligation without fiscal year limitation, to remain
10 available until expended.

11 (2) EXPENSES.—

12 (A) FEES.—Fees collected for expenses
13 shall be available without limitation to cover ap-
14 plicable expenses.

15 (B) FUND.—To the extent that expenses
16 are not reimbursed through fees, an amount not
17 to exceed 1.5 percent of the amounts in the
18 Fund as of the beginning of each fiscal year
19 shall be available to pay the expenses for the
20 fiscal year necessary to carry out this Act or
21 title XVII of the Energy Policy Act of 2005 (42
22 U.S.C. 16511 et seq.).

23 (c) TRANSFERS OF AMOUNTS.—

24 (1) IN GENERAL.—The amounts required to be
25 transferred to the Fund under this section shall be

1 transferred at least monthly from the general fund
2 of the Treasury to the Fund on the basis of esti-
3 mates made by the Secretary of the Treasury.

4 (2) CASH FLOWS.—Cash flows associated with
5 costs of the Fund described in section 502(5)(B) of
6 the Federal Credit Reform Act of 1990 (2 U.S.C.
7 661a(5)(B)) shall be transferred to appropriate
8 credit accounts.

9 (3) ADJUSTMENTS.—Proper adjustment shall
10 be made in amounts subsequently transferred to the
11 extent prior estimates were in excess of or less than
12 the amounts required to be transferred.

13 **SEC. 5. REVISIONS TO LOAN GUARANTEE PROGRAM AU-**
14 **THORITY.**

15 (a) DEFINITION OF COMMERCIAL TECHNOLOGY.—
16 Section 1701(1) of the Energy Policy Act of 2005 (42
17 U.S.C. 16511(1)) is amended by striking subparagraph
18 (B) and inserting the following:

19 “(B) EXCLUSION.—The term ‘commercial
20 technology’ does not include a technology if the
21 sole use of the technology is in connection
22 with—

23 “(i) a demonstration project; or

24 “(ii) a project for which the Secretary
25 approved a loan guarantee.”.

1 (b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—
2 Section 1702 of the Energy Policy Act of 2005 (42 U.S.C.
3 16512) is amended by striking subsection (b) and insert-
4 ing the following:

5 “(b) SPECIFIC APPROPRIATION OR CONTRIBU-
6 TION.—

7 “(1) IN GENERAL.—No guarantee shall be
8 made unless sufficient amounts to account for the
9 cost are available—

10 “(A) in unobligated balances within the
11 Clean Energy Investment Fund established by
12 section 4(a) of the Clean Energy Financing Act
13 of 2011;

14 “(B) as a payment from the borrower and
15 the payment is deposited in the Clean Energy
16 Investment Fund; or

17 “(C) in any combination of balances and
18 payments described in subparagraphs (A) and
19 (B), respectively.

20 “(2) LIMITATION.—The source of payments re-
21 ceived from a borrower under paragraph (1)(B) shall
22 not be a loan or other debt obligation that is made
23 or guaranteed by the Federal Government.”.

1 (c) FEES.—Section 1702(h) of the Energy Policy Act
2 of 2005 (43 U.S.C. 16512(h)) is amended by adding at
3 the end the following:

4 “(3) ADJUSTMENT.—The Secretary may adjust
5 the amount or manner of collection of fees under
6 this title as the Secretary determines is necessary to
7 promote, to the maximum extent practicable, eligible
8 projects under this title.

9 “(4) CREDIT REPORT.—The Secretary may
10 waive any otherwise applicable requirement (includ-
11 ing any requirement described in part 609 of title
12 10, Code of Federal Regulations (or successor regu-
13 lations)) to provide a third-party credit report if—

14 “(A) the Secretary determines that a
15 third-party credit rating of the applicant or
16 project is not relevant to the determination of
17 the credit risk of a project;

18 “(B) the project costs are not projected to
19 exceed \$100,000,000; and

20 “(C) the applicant agrees to accept the
21 credit rating assigned to the applicant by the
22 Secretary.”.

23 (d) PROCESSING.—Section 1702 of the Energy Policy
24 Act of 2005 (42 U.S.C. 16512) is amended by adding at
25 the end the following:

1 “(k) ACCELERATED REVIEWS.—To the maximum ex-
2 tent practicable and consistent with sound business prac-
3 tices, the Secretary shall seek to consolidate internal and
4 interagency reviews of projects under this title such that
5 final decisions on applications can generally be issued not
6 later than 180 days after the date of submission of a com-
7 pleted application.

8 “(l) PROFESSIONAL ADVISORS.—The Secretary
9 may—

10 “(1) retain agents and legal and other profes-
11 sional advisors in connection with guarantees and re-
12 lated activities authorized under this title;

13 “(2) require applicants for and recipients of
14 loan guarantees to pay all fees and expenses of the
15 agents and advisors; and

16 “(3) notwithstanding any other provision of
17 law, select such advisors in such manner and using
18 such procedures as the Secretary determines to be
19 appropriate to protect the interests of the United
20 States and achieve the purposes of this title.

21 “(m) MULTIPLE SITES.—Notwithstanding any other
22 provision of law (including section 609.12 of title 10, Code
23 of Federal Regulations (or successor regulations)), an eli-
24 gible project may be located on 2 or more noncontiguous
25 sites in the United States.”.

1 (e) TERMS AND CONDITIONS.—Section 1702 of the
2 Energy Policy Act of 2005 (42 U.S.C. 16512) (as amend-
3 ed by subsection (d)) is amended at the end by adding
4 the following:

5 “(n) COST OF OBLIGATION.—If the borrower is pro-
6 viding a payment for the cost of a proposed loan guarantee
7 and the guarantee amount is greater than
8 \$1,000,000,000, the Secretary shall determine the cost of
9 the obligation on the basis of a project-specific financial
10 risk assessment that—

11 “(1) includes a written explanation of any dif-
12 ferences between—

13 “(A) the estimated probability of default,
14 as determined by the Secretary; and

15 “(B) the estimated probability of default
16 contained in any credit assessment performed
17 by an independent rating agency;

18 “(2) includes a written explanation of any dif-
19 ferences between—

20 “(A) the estimated value of the recovery in
21 the event of default, as determined by the Sec-
22 retary; and

23 “(B) the estimated value of the recovery in
24 the event of default contained in any recovery
25 plan submitted by the borrower; and

1 “(3) is made available to the borrower for re-
2 view and comment prior to a final determination.”.

3 (f) **ELIGIBLE PROJECTS.**—Section 1703(b)(4) of the
4 Energy Policy Act of 2005 (42 U.S.C. 16513(b)(4)) is
5 amended by inserting “(including nuclear power parts,
6 services, and fuel suppliers, and small modular reactors,
7 if additional loan volume authority is provided for a
8 project described in this parenthetical in an appropriation
9 Act enacted after July 1, 2011)” after “energy facilities”.

10 (g) **WAGE RATES.**—Section 1705(c) of the Energy
11 Policy Act of 2005 (42 U.S.C. 16516(c)) is amended by
12 striking “support under this section” and inserting “sup-
13 port under this title”.

14 **SEC. 6. ENERGY TECHNOLOGY DEPLOYMENT GOALS.**

15 (a) **GOALS.**—Not later than 1 year after the date of
16 enactment of this Act, the Secretary, after consultation
17 with the Advisory Council, shall develop and publish for
18 review and comment in the Federal Register near-, me-
19 dium-, and long-term goals (including numerical perform-
20 ance targets at appropriate intervals to measure progress
21 toward those goals) for the deployment of clean energy
22 technologies through the credit support programs estab-
23 lished by this Act (including an amendment made by this
24 Act) to promote—

1 (1) sufficient electric generating capacity using
2 clean energy technologies to meet the energy needs
3 of the United States;

4 (2) clean energy technologies in vehicles and
5 fuels that will substantially reduce the reliance of
6 the United States on foreign sources of energy and
7 insulate consumers from the volatility of world en-
8 ergy markets;

9 (3) a domestic commercialization and manufac-
10 turing capacity that will establish the United States
11 as a world leader in clean energy technologies across
12 multiple sectors, including the production of ad-
13 vanced materials used in clean energy technologies;

14 (4) installation of sufficient infrastructure to
15 allow for the cost-effective deployment of clean en-
16 ergy technologies appropriate to each region of the
17 United States;

18 (5) the transformation of the building stock of
19 the United States to zero net energy consumption,
20 including through energy efficiency and the use of
21 clean distributed energy;

22 (6) the recovery, use, and prevention of waste
23 energy;

1 (7) domestic manufacturing of clean energy
2 technologies on a scale that is sufficient to achieve
3 price parity with conventional energy sources;

4 (8) domestic production of commodities, indus-
5 trial bio-products, and materials (such as steel,
6 chemicals, polymers, biopolymers, and cement) using
7 clean energy technologies so that the United States
8 will become a world leader in environmentally sus-
9 tainable production of the commodities and mate-
10 rials;

11 (9) a robust, efficient, and interactive electricity
12 transmission grid that will allow for the incorpora-
13 tion of clean energy technologies, distributed genera-
14 tion, clean distributed energy, smart grid functions,
15 and demand-response in each regional electric grid;

16 (10) to overcome market barriers (including
17 lack of financing as the result of upfront cost de-
18 spite the possibility of reasonable payback time-
19 frames) and promote energy efficiency and clean dis-
20 tributed energy technologies, ensure sufficient avail-
21 ability of financial products to allow owners and
22 users of residential, retail, commercial, multifamily
23 residence, municipal, institution of higher education,
24 school, hospital, and industrial buildings to make en-
25 ergy efficiency (including building retrofits) and dis-

1 tributed generation and clean distributed energy
2 technology investments with reasonable payback pe-
3 riods, including enabling municipalities, cooperatives,
4 tribes, and other tax-exempt entities to deploy com-
5 munity-owned energy generation and energy effi-
6 ciency projects; and

7 (11) such other goals as the Secretary, in con-
8 sultation with the Advisory Council, determines to be
9 consistent with the purposes of this Act.

10 (b) REVISIONS.—The Secretary shall revise the goals
11 established under subsection (a), from time to time as ap-
12 propriate, to account for advances in technology and
13 changes in energy policy.

14 **SEC. 7. CLEAN ENERGY DEPLOYMENT ADMINISTRATION.**

15 (a) ESTABLISHMENT.—

16 (1) IN GENERAL.—There is established in the
17 Department of Energy an administration to be
18 known as the Clean Energy Deployment Administra-
19 tion, under the direction of the Administrator and
20 the Board of Directors.

21 (2) STATUS.—

22 (A) IN GENERAL.—The Administration
23 (including officers, employees, and agents of the
24 Administration) shall not be responsible to, or
25 subject to the authority, direction, or control of,

1 any other officer, employee, or agent of the De-
2 partment of Energy other than the Secretary,
3 acting through the Administrator.

4 (B) EXEMPTION FROM REORGANIZA-
5 TION.—The Administration shall be exempt
6 from the reorganization authority provided
7 under section 643 of the Department of Energy
8 Organization Act (42 U.S.C. 7253).

9 (C) INSPECTOR GENERAL.—Section 12 of
10 the Inspector General Act of 1978 (5 U.S.C.
11 App.) is amended—

12 (i) in paragraph (1), by inserting “the
13 Administrator of the Clean Energy Deploy-
14 ment Administration;” after “Export-Im-
15 port Bank;” and

16 (ii) in paragraph (2), by inserting
17 “the Clean Energy Deployment Adminis-
18 tration,” after “Export-Import Bank,”.

19 (3) OFFICES.—

20 (A) PRINCIPAL OFFICE.—The Administra-
21 tion shall—

22 (i) maintain the principal office of the
23 Administration in the District of Columbia;
24 and

1 (ii) for purposes of venue in civil ac-
2 tions, be considered to be a resident of the
3 District of Columbia.

4 (B) OTHER OFFICES.—The Administration
5 may establish other offices in such other places
6 as the Administration considers necessary or
7 appropriate for the conduct of the business of
8 the Administration.

9 (b) ADMINISTRATOR.—

10 (1) IN GENERAL.—The Administrator shall
11 be—

12 (A) appointed by the President, by and
13 with the advice and consent of the Senate, for
14 a 5-year term; and

15 (B) compensated at the annual rate of
16 basic pay prescribed for level II of the Execu-
17 tive Schedule under section 5313 of title 5,
18 United States Code.

19 (2) DUTIES.—The Administrator shall—

20 (A) serve as the Chief Executive Officer of
21 the Administration and Chairman of the Board;

22 (B) ensure that—

23 (i) the Administration operates in a
24 safe and sound manner, including mainte-
25 nance of adequate capital and internal con-

1 trols (consistent with section 404 of the
2 Sarbanes-Oxley Act of 2002 (15 U.S.C.
3 7262));

4 (ii) the operations and activities of the
5 Administration foster liquid, efficient, com-
6 petitive, and resilient energy and energy ef-
7 ficiency finance markets;

8 (iii) the Administration carries out the
9 purposes of this Act only through activities
10 that are authorized under and consistent
11 with this Act;

12 (iv) the activities of the Administra-
13 tion and the manner in which the Adminis-
14 tration is operated are consistent with the
15 public interest; and

16 (v) no project exceeds the net green-
17 house gas emissions (measured on a ton
18 per unit of output basis, expressed in, car-
19 bon dioxide equivalency terms) resulting
20 from the operation of existing and com-
21 mercially-deployed technologies or facilities
22 that are producing comparable commod-
23 ities or products within the United States
24 as of the date of enactment of this Act;

1 (C) develop policies and procedures for the
2 Administration that will—

3 (i) promote a portfolio of investments
4 that will maximize the value of investments
5 to effectively promote clean energy tech-
6 nologies;

7 (ii) promote transparency and open-
8 ness in Administration operations;

9 (iii) afford the Administration with
10 sufficient flexibility to meet the purposes of
11 this Act;

12 (iv) provide for the efficient proc-
13 essing of applications;

14 (v) promote, consistent with the pur-
15 poses of this Act, the participation of pri-
16 vate financial institutions and other
17 sources of private capital, on commercially
18 reasonable terms, if and to the extent the
19 capital is available;

20 (vi) promote the availability of finan-
21 cial products to small business through
22 working with entities that have appropriate
23 expertise extending credit or other relevant
24 financial services to small companies devel-
25 oping clean energy technologies; and

1 (vii) promote the availability of finan-
2 cial products to municipalities, coopera-
3 tives, tribes, and other tax-exempt entities
4 to develop community-owned clean energy
5 generation and energy efficiency projects;

6 (D) develop, in consultation with the Advi-
7 sory Council, and publish for comment in the
8 Federal Register a methodology for the relative
9 assessment of clean energy technologies that
10 will allow for the evaluation of projects based
11 on progress likely to be achieved per-dollar in-
12 vested toward maximizing the attributes of
13 clean energy technologies, taking into account
14 the extent to which support provided under this
15 Act is likely to accrue subsequent benefits at-
16 tributable to commercial-scale deployment ear-
17 lier than would have otherwise occurred; and

18 (E) with the concurrence of the Board, set
19 expected loss reserves for the support provided
20 by the Administration consistent with section
21 8(a)(1)(C).

22 (c) BOARD OF DIRECTORS.—

23 (1) IN GENERAL.—The Board of Directors of
24 the Administration shall consist of—

1 (A) the Secretary or the designee of the
2 Secretary, who shall serve as an ex-officio vot-
3 ing member of the Board of Directors;

4 (B) the Administrator, who shall serve as
5 the Chairman of the Board of Directors; and

6 (C) 7 additional members who shall—

7 (i) be appointed, by the President, by
8 and with the advice and consent of the
9 Senate, for staggered 5-year terms; and

10 (ii) to the maximum extent prac-
11 ticable, have experience in banking or fi-
12 nancial services relevant to the operations
13 of the Administration, including individuals
14 with substantial experience in the develop-
15 ment of energy projects, the electricity
16 generation sector, the transportation sec-
17 tor, the manufacturing sector, and the en-
18 ergy efficiency sector (including building
19 retrofits).

20 (2) DUTIES.—The Board of Directors shall—

21 (A) oversee the operations of the Adminis-
22 tration and ensure industry best practices are
23 followed in all financial transactions involving
24 the Administration;

1 (B) consult with the Administrator on the
2 general policies and procedures of the Adminis-
3 tration to ensure the interests of the taxpayers
4 are protected;

5 (C) ensure the portfolio of investments are
6 consistent with purposes of this Act and with
7 the long-term financial stability of the Adminis-
8 tration;

9 (D) ensure that the operations and activi-
10 ties of the Administration are consistent with
11 the development of a robust private sector that
12 can provide commercial loans or financing prod-
13 ucts; and

14 (E) not serve on a full-time basis, except
15 that the Board of Directors shall meet at least
16 quarterly to review, as appropriate, applications
17 for credit support and set policies and proce-
18 dures as necessary.

19 (3) REMOVAL.—An appointed member of the
20 Board of Directors may be removed from office by
21 the President for good cause.

22 (4) VACANCIES.—An appointed seat on the
23 Board of Directors that becomes vacant shall be
24 filled by appointment by the President, but only for

1 the unexpired portion of the term of the vacating
2 member.

3 (5) COMPENSATION OF MEMBERS.—An ap-
4 pointed member of the Board of Directors shall be
5 compensated at a rate equal to the daily equivalent
6 of the annual rate of basic pay prescribed for level
7 III of the Executive Schedule under section 5314 of
8 title 5, United States Code, for each day (including
9 travel time) during which the member is engaged in
10 the performance of the duties of the Board of Direc-
11 tors.

12 (d) ENERGY TECHNOLOGY ADVISORY COUNCIL.—

13 (1) IN GENERAL.—The Administration shall
14 have an Energy Technology Advisory Council con-
15 sisting of—

16 (A) 5 members selected by the Secretary;

17 and

18 (B) 3 members selected by the Board of
19 Directors of the Administration.

20 (2) QUALIFICATIONS.—The members of the Ad-
21 visory Council shall—

22 (A) have relevant scientific expertise; and

23 (B) in the case of the members selected by
24 the Secretary under paragraph (1)(A), include
25 representatives of—

- 1 (i) the academic community;
- 2 (ii) the private research community;
- 3 (iii) National Laboratories;
- 4 (iv) the technology or project develop-
- 5 ment community; and
- 6 (v) the commercial energy financing
- 7 and operations sector.

8 (3) DUTIES.—The Advisory Council shall—

9 (A) advise on the methodology developed
10 under subsection (b)(2)(D); and

11 (B) advise on the technological approaches
12 that should be supported by the Administration
13 to meet the technology deployment goals estab-
14 lished by the Secretary pursuant to section 6.

15 (4) TERM.—

16 (A) IN GENERAL.—Members of the Advi-
17 sory Council shall have 5-year staggered terms,
18 as determined by the Secretary and the Admin-
19 istrator.

20 (B) REAPPOINTMENT.—A member of the
21 Advisory Council may be reappointed.

22 (5) COMPENSATION.—A member of the Advi-
23 sory Council, who is not otherwise compensated as
24 a Federal employee, shall be compensated at a rate
25 equal to the daily equivalent of the annual rate of

1 basic pay prescribed for level IV of the Executive
2 Schedule under section 5315 of title 5, United
3 States Code, for each day (including travel time)
4 during which the member is engaged in the perform-
5 ance of the duties of the Advisory Council.

6 (e) STAFF.—

7 (1) IN GENERAL.—The Administrator, in con-
8 sultation with the Board of Directors, may—

9 (A) appoint and terminate such officers,
10 attorneys, employees, and agents as are nec-
11 essary to carry out this Act; and

12 (B) vest those personnel with such powers
13 and duties as the Administrator may determine.

14 (2) DIRECT HIRE AUTHORITY.—

15 (A) IN GENERAL.—Notwithstanding sec-
16 tion 3304 and sections 3309 through 3318 of
17 title 5, United States Code, the Administrator
18 may, on a determination that there is a severe
19 shortage of candidates or a critical hiring need
20 for particular positions, recruit and directly ap-
21 point highly qualified critical personnel with
22 specialized knowledge important to the function
23 of the Administration into the competitive serv-
24 ice.

1 (B) EXCEPTION.—The authority granted
2 under subparagraph (A) shall not apply to posi-
3 tions in the excepted service or the Senior Exec-
4 utive Service.

5 (C) REQUIREMENTS.—In exercising the
6 authority granted under subparagraph (A), the
7 Administrator shall ensure that any action
8 taken by the Administrator—

9 (i) is consistent with the merit prin-
10 ciples of section 2301 of title 5, United
11 States Code; and

12 (ii) complies with the public notice re-
13 quirements of section 3327 of title 5,
14 United States Code.

15 (D) TERMINATION OF EFFECTIVENESS.—
16 The authority provided by this paragraph ter-
17 minates effective on the date that is 2 years
18 after the date of enactment of this Act.

19 (3) CRITICAL PAY AUTHORITY.—

20 (A) IN GENERAL.—Notwithstanding sec-
21 tion 5377 of title 5, United States Code, and
22 without regard to the provisions of that title
23 governing appointments in the competitive serv-
24 ice or the Senior Executive Service and chap-
25 ters 51 and 53 of that title (relating to classi-

1 fication and pay rates), the Administrator may
2 establish, fix the compensation of, and appoint
3 individuals to critical positions needed to carry
4 out the functions of the Administration, if the
5 Administrator certifies that—

6 (i) the positions require expertise of
7 an extremely high level in a financial, tech-
8 nical, or scientific field;

9 (ii) the Administration would not suc-
10 cessfully accomplish an important mission
11 without such an individual; and

12 (iii) exercise of the authority is nec-
13 essary to recruit an individual who is ex-
14 ceptionally well qualified for the position.

15 (B) LIMITATIONS.—The authority granted
16 under subparagraph (A) shall be subject to the
17 following conditions:

18 (i) The number of critical positions
19 authorized by subparagraph (A) may not
20 exceed 20 at any 1 time in the Administra-
21 tion.

22 (ii) The term of an appointment
23 under subparagraph (A) may not exceed 4
24 years.

1 (iii) An individual appointed under
2 subparagraph (A) may not have been an
3 Administration employee at any time dur-
4 ing the 2-year period preceding the date of
5 appointment.

6 (iv) Total annual compensation for
7 any individual appointed under subpara-
8 graph (A) may not exceed the highest total
9 annual compensation payable at the rate
10 determined under section 104 of title 3,
11 United States Code.

12 (v) An individual appointed under
13 subparagraph (A) may not be considered
14 to be an employee for purposes of sub-
15 chapter II of chapter 75 of title 5, United
16 States Code.

17 (C) NOTIFICATION.—Each year, the Ad-
18 ministrator shall submit to Congress a notifica-
19 tion that lists each individual appointed under
20 this paragraph.

21 **SEC. 8. ADMINISTRATION FUNCTIONS.**

22 (a) OPERATIONAL UNITS.—

23 (1) DIRECT SUPPORT.—

24 (A) IN GENERAL.—The Administration
25 may issue direct loans, letters of credit, loan

1 guarantees, insurance products, or such other
2 credit enhancements (including through partici-
3 pation as a co-lender or a lending member of a
4 syndication) as the Administrator considers ap-
5 propriate to manufacture or deploy clean energy
6 technologies and clean distributed energy tech-
7 nologies or associated advanced materials if the
8 Administrator has determined that deployment
9 of the technologies would benefit or be acceler-
10 ated by the support.

11 (B) ELIGIBILITY CRITERIA.—In carrying
12 out this paragraph and awarding credit support
13 to projects, the Administrator shall account
14 for—

15 (i) how the technology rates based on
16 an evaluation methodology established by
17 the Advisory Council;

18 (ii) how the project fits with the goals
19 established under section 6; and

20 (iii) the potential for the applicant to
21 successfully complete the project.

22 (C) RISK.—

23 (i) EXPECTED LOSS RESERVE.—The
24 Administrator shall establish an expected
25 loss reserve to account for estimated losses

1 attributable to activities under this section
2 that is consistent with the purposes of—

3 (I) developing breakthrough tech-
4 nologies to the point at which tech-
5 nology risk is largely mitigated;

6 (II) achieving widespread deploy-
7 ment and advancing the commercial
8 viability of clean energy technologies
9 and clean distributed energy tech-
10 nologies; and

11 (III) advancing the goals estab-
12 lished under section 6.

13 (ii) INITIAL EXPECTED LOSS RE-
14 SERVE.—Until such time as the Adminis-
15 trator determines sufficient data exist to
16 establish an expected loss reserve that is
17 appropriate, the Administrator shall con-
18 sider establishing an initial rate of 10 per-
19 cent for the portfolio of investments under
20 this Act.

21 (iii) PORTFOLIO INVESTMENT AP-
22 PROACH.—The Administration shall—

23 (I) use a portfolio investment ap-
24 proach to mitigate risk and diversify
25 investments across technologies;

1 (II) to the maximum extent prac-
2 ticable and consistent with promoting
3 the continued viability of the Adminis-
4 tration and robust private financing
5 markets for clean energy technologies,
6 weigh the portfolio of investments in
7 projects to advance the goals estab-
8 lished under section 6; and

9 (III) consistent with the expected
10 loss reserve established under this
11 subparagraph, the purposes of this
12 Act, and section 7(b)(2)(B), provide
13 the maximum practicable percentage
14 of support to promote breakthrough
15 technologies.

16 (iv) LOSS RATE REVIEW.—

17 (I) IN GENERAL.—The Board of
18 Directors shall review on an annual
19 basis the loss rates of the portfolio to
20 determine the adequacy of the re-
21 serves.

22 (II) REPORT.—Not later than 90
23 days after the date of the initiation of
24 the review, the Administrator shall
25 submit to the Committee on Energy

1 and Natural Resources of the Senate
2 and the Committee on Energy and
3 Commerce of the House of Represent-
4 atives a report describing the results
5 of the review and any recommended
6 policy changes.

7 (D) APPLICATION REVIEW.—

8 (i) IN GENERAL.—To the maximum
9 extent practicable and consistent with
10 sound business practices, the Administra-
11 tion shall seek to consolidate internal and
12 interagency reviews of projects under this
13 Act such that final decisions on applica-
14 tions can generally be issued not later than
15 180 days after the date of submission of a
16 completed application.

17 (ii) ENVIRONMENTAL REVIEW.—In
18 carrying out this Act, the Administration
19 shall, to the maximum extent practicable—

20 (I) avoid duplicating efforts that
21 have already been undertaken by
22 other agencies (including State agen-
23 cies acting under Federal programs);
24 and

1 (II) with the advice of the Coun-
2 cil on Environmental Quality and any
3 other applicable agencies, use the ad-
4 ministrative records of similar reviews
5 conducted throughout the executive
6 branch to develop the most expedi-
7 tious review process practicable.

8 (E) WAGE RATE REQUIREMENTS.—

9 (i) IN GENERAL.—No credit support
10 shall be issued under this section unless
11 the borrower has provided to the Adminis-
12 trator reasonable assurances that all labor-
13 ers and mechanics employed by contractors
14 and subcontractors in the performance of
15 construction work financed in whole or in
16 part by the Administration will be paid
17 wages at rates not less than those pre-
18 vailing on projects of a character similar to
19 the contract work in the civil subdivision of
20 the State in which the contract work is to
21 be performed as determined by the Sec-
22 retary of Labor in accordance with sub-
23 chapter IV of chapter 31 of part A of sub-
24 title II of title 40, United States Code.

1 (ii) LABOR STANDARDS.—With re-
2 spect to the labor standards specified in
3 this section, the Secretary of Labor shall
4 have the authority and functions set forth
5 in Reorganization Plan Numbered 14 of
6 1950 (64 Stat. 1267; 5 U.S.C. App.) and
7 section 3145 of title 40, United States
8 Code.

9 (2) INDIRECT SUPPORT.—

10 (A) IN GENERAL.—The Administration
11 shall work to develop financial products and ar-
12 rangements to both promote the widespread de-
13 ployment of, and mobilize private sector support
14 of credit and investment institutions for, clean
15 energy technologies, clean distributed energy
16 technologies, and related manufacturing by fa-
17 cilitating aggregation of small projects and by
18 providing indirect credit support, including
19 credit enhancement.

20 (B) FINANCIAL PRODUCTS.—The Adminis-
21 tration—

22 (i) in cooperation with Federal, State,
23 local, and private sector entities, shall de-
24 velop debt instruments that provide for the
25 aggregation of, or directly aggregate,

1 projects for clean energy technology and
2 clean distributed energy technology deploy-
3 ments on a scale appropriate for residen-
4 tial or commercial applications;

5 (ii) may insure, purchase, and make
6 commitments to purchase, any debt instru-
7 ment associated with the deployment of
8 clean energy technologies and clean distrib-
9 uted energy technologies (including instru-
10 ments secured by liens or other collateral
11 related to the funding of clean energy tech-
12 nology and clean distributed energy tech-
13 nology) for the purposes of enhancing the
14 availability of private financing for clean
15 energy technology and clean distributed en-
16 ergy technology deployments; and

17 (iii) may develop appropriate credit
18 support mechanisms (including insurance,
19 support for energy services agreements or
20 property-assessed clean energy bonds, ag-
21 gregate on-meter agreements, and other
22 similar mechanisms) to promote financing
23 of commercial, industrial, multifamily resi-
24 dence, municipal, institution of higher edu-
25 cation, school, and hospital building energy

1 efficiency retrofit projects, or pools of
2 projects, including such criteria, standards,
3 and guidelines as are necessary to foster
4 widespread private sector adoption, includ-
5 ing measurement and verification of energy
6 savings.

7 (C) DISPOSITION OF DEBT OR INTER-
8 EST.—The Administration may acquire, hold,
9 and sell or otherwise dispose of, pursuant to
10 commitments or otherwise, any debt associated
11 with the deployment of clean energy tech-
12 nologies or interest in the debt.

13 (D) PRICING.—

14 (i) IN GENERAL.—The Administrator
15 may establish requirements, and impose
16 charges or fees, which may be regarded as
17 elements of pricing, for different classes of
18 sellers, servicers, or services.

19 (ii) CLASSIFICATION OF SELLERS AND
20 SERVICERS.—For the purpose of clause (i),
21 the Administrator may classify sellers and
22 servicers as necessary to promote trans-
23 parency and liquidity and properly charac-
24 terize the risk of default.

1 (E) ELIGIBILITY.—The Administrator
2 shall establish—

3 (i) eligibility criteria for loan origina-
4 tors, sellers, and servicers seeking support
5 for portfolios of financial obligations relat-
6 ing to clean energy technologies so as to
7 ensure the capability of the loan origina-
8 tors, sellers, and servicers to perform the
9 functions required to maintain the ex-
10 pected performance of the portfolios; and

11 (ii) such criteria, standards, guide-
12 lines, and mechanisms such that, to the
13 maximum extent practicable, loan origina-
14 tors and sellers will be able to determine
15 the eligibility of loans for resale at the time
16 of initial lending.

17 (F) SECONDARY MARKET SUPPORT.—

18 (i) IN GENERAL.—The Administration
19 may lend on the security of, and make
20 commitments to lend on the security of,
21 any debt that the Administration has
22 issued or is authorized to purchase under
23 this section.

24 (ii) AUTHORIZED ACTIONS.—On such
25 terms and conditions as the Administrator

1 may prescribe, the Administration may,
2 based on the debt and with the concur-
3 rence of the Board of Directors—

4 (I) give security or guarantee;

5 (II) pay interest or other return;

6 and

7 (III) issue notes, debentures,
8 bonds, or other obligations or securi-
9 ties.

10 (G) LENDING ACTIVITIES.—

11 (i) IN GENERAL.—The Administrator
12 shall determine—

13 (I) the volume of the lending ac-
14 tivities of the Administration; and

15 (II) the types of loan ratios, risk
16 profiles, interest rates, maturities, and
17 charges or fees in the secondary mar-
18 ket operations of the Administration.

19 (ii) OBJECTIVES.—Determinations
20 under clause (i) shall be consistent with
21 the objectives of—

22 (I) providing an attractive invest-
23 ment environment for clean energy
24 technologies;

1 (II) making the operations of the
2 Administration self-supporting over
3 the long term; and

4 (III) advancing the goals estab-
5 lished under section 6.

6 (H) EXEMPT SECURITIES.—All securities
7 issued or guaranteed by the Administration
8 shall, to the same extent as securities that are
9 direct obligations of or obligations guaranteed
10 as to principal or interest by the United States,
11 be considered to be exempt securities within the
12 meaning of the laws administered by the Secu-
13 rities and Exchange Commission.

14 (b) OTHER AUTHORIZED PROGRAMS.—

15 (1) IN GENERAL.—The Secretary may delegate
16 to the Administration the provision of financial serv-
17 ices and program management for grant, loan, and
18 other credit enhancement programs authorized
19 under any other provision of law.

20 (2) ADMINISTRATION.—In administering any
21 other program delegated by the Secretary, the Ad-
22 ministration shall, to the maximum extent prac-
23 ticable (as determined by the Administrator)—

1 (A) administer the program in a manner
2 that is consistent with the terms and conditions
3 of this Act; and

4 (B) minimize the administrative costs to
5 the Federal Government.

6 (3) LOANS FOR QUALIFIED ENERGY EFFI-
7 CIENCY PROJECTS.—

8 (A) DEFINITIONS.—In this paragraph:

9 (i) ELECTRIC UTILITY.—The term
10 “electric utility” has the meaning given the
11 term in section 3 of the Public Utility Reg-
12 ulatory Policies Act of 1978 (16 U.S.C.
13 2602).

14 (ii) NATURAL GAS UTILITY.—The
15 term “natural gas utility” has the meaning
16 given the term “gas utility” in section 302
17 of the Public Utility Regulatory Policies
18 Act of 1978 (15 U.S.C. 3202).

19 (iii) QUALIFIED ENERGY EFFICIENCY
20 PROJECT.—The term “qualified energy ef-
21 ficiency project” means, as determined by
22 the Administrator, a project, technology,
23 function, or measure—

24 (I) that results in the reduction
25 of energy use required to achieve the

1 same level of service or output prior
2 to the application of the project, tech-
3 nology, function, or measure;

4 (II) that is carried out domesti-
5 cally within the territorial borders of
6 the United States; and

7 (III) the payback period of which
8 does not exceed 10 years.

9 (B) LOANS FOR ELECTRIC UTILITIES AND
10 NATURAL GAS UTILITIES.—

11 (i) IN GENERAL.—The Administrator
12 may make loans available to an electric
13 utility or natural gas utility to carry out
14 qualified energy efficiency projects.

15 (ii) TERM, INTEREST RATE, AND RE-
16 PAYMENT.—A loan made by the Adminis-
17 trator to an electric utility or natural gas
18 utility under this paragraph shall—

19 (I) be for a term of 30 years or
20 less;

21 (II) bear an annual interest rate
22 that is 50 basis points more than the
23 Federal funds rate established by the
24 Board of Governors of the Federal

1 Reserve System at the time of loan
2 approval; and

3 (III) provide for any additional
4 revenue, generated after the payback
5 period from foregone energy costs at-
6 tributable to the qualified energy effi-
7 ciency project funded by the loan to
8 be divided equally between the appli-
9 cant and the Fund.

10 (C) DISAPPROVAL.—The Administrator
11 may disapprove an application for a loan for a
12 qualified energy efficiency project under this
13 paragraph if the Administrator determines
14 that—

15 (i) the qualified energy efficiency
16 project would not—

17 (I) result in a significant reduc-
18 tion in energy consumption; or

19 (II) benefit a significant number
20 of energy consumers; or

21 (ii) the project applicant—

22 (I) has not successfully completed
23 the qualified energy efficiency project
24 in a timely manner; or

1 (II) may not be able to repay the
2 loan over the life of the loan.

3 **SEC. 9. FEDERAL CREDIT AUTHORITY.**

4 (a) TRANSFER OF AUTHORITY.—

5 (1) IN GENERAL.—Subject to paragraph (2), on
6 a finding by the Secretary and the Administrator
7 that the Administration is sufficiently ready to as-
8 sume the functions and that applicants to those pro-
9 grams will not be unduly adversely affected but in
10 no case later than 18 months after the date of en-
11 actment of this Act, all of the authority of the Sec-
12 retary under title XVII of the Energy Policy Act of
13 2005 (42 U.S.C. 16511 et seq.) and authorities es-
14 tablished by this Act shall be transferred to the Ad-
15 ministration to carry out this Act.

16 (2) FAILURE TO TRANSFER AUTHORITIES.—If
17 the authorities are not transferred to the Adminis-
18 tration in accordance with paragraph (1), the Sec-
19 retary and the Administrator shall submit to Con-
20 gress a report on the reasons for delay and an ex-
21 pected timetable for transfer of the authorities to
22 the Administration.

23 (3) EFFECT ON EXISTING RIGHTS AND OBLIGA-
24 TIONS.—The transfer of authority under this sub-
25 section shall not affect the rights and obligations of

1 any party that arise under a predecessor program or
2 authority prior to the transfer under this subsection.

3 (4) TRANSFER OF FUND AUTHORITY.—

4 (A) IN GENERAL.—On transfer of author-
5 ity pursuant to paragraph (1), the Administra-
6 tion shall have all authorities to make use of
7 the Fund reserved for the Secretary before the
8 transfer.

9 (B) ADMINISTRATIVE EXPENSES.—Effec-
10 tive beginning on the date of enactment of this
11 Act, the Administrator may make use of up to
12 1.5 percent of the amounts in the Fund as of
13 the beginning of each fiscal year to pay admin-
14 istrative expenses for that fiscal year to carry
15 out the purposes of this Act.

16 (5) USE.—

17 (A) IN GENERAL.—Amounts in the Fund
18 shall be available for discharge of liabilities and
19 all other expenses of the Administration, includ-
20 ing subsequent transfer to the respective credit
21 accounts.

22 (B) LIABILITY.—All activities of the Ad-
23 ministration that could result in a liability for
24 the United States shall be transparently ac-

1 counted for and no obligation or liability may
2 be incurred unless—

3 (i) the appropriate amounts are trans-
4 ferred to credit accounts for activities pur-
5 suant to the Federal Credit Reform Act of
6 1990 (2 U.S.C. 661a); or

7 (ii) sufficient amounts are reserved
8 within the Fund to account for such liabil-
9 ities.

10 (6) INITIAL INVESTMENT.—It is the sense of
11 the Senate that the Fund should include
12 \$10,000,000,000 in initial capitalization, with such
13 funds offset to ensure no net increase in the national
14 debt.

15 (b) PAYMENTS OF LIABILITIES.—

16 (1) IN GENERAL.—Any payment to discharge li-
17 abilities arising from agreements under this Act
18 shall be made exclusively out of the Fund or the as-
19 sociated credit account, as appropriate.

20 (2) SECURITY.—Subject to paragraph (1), the
21 full faith and credit of the United States is pledged
22 to the payment of all obligations entered into by the
23 Administration pursuant to this Act.

24 (c) FEES.—

1 (1) IN GENERAL.—Consistent with achieving
2 the purposes of this Act, the Administrator shall
3 charge fees or collect compensation generally in ac-
4 cordance with commercial rates.

5 (2) AVAILABILITY OF FEES.—All fees collected
6 by the Administration may be retained by the Ad-
7 ministration and placed in the Fund and may re-
8 main available to the Administration, without fur-
9 ther appropriation or fiscal year limitation, for use
10 in carrying out the purposes of this Act.

11 (3) BREAKTHROUGH TECHNOLOGIES.—To the
12 extent practicable, the Administration shall use al-
13 ternative fee arrangements and charge the minimum
14 amount in upfront fees or compensation for break-
15 through technologies, consistent with the long-term
16 viability of the Administration, unless the Adminis-
17 tration first determines that a higher initial charge
18 will not impede the development of the technology.

19 (4) ALTERNATIVE FEE ARRANGEMENTS.—The
20 Administration may use such alternative arrange-
21 ments (such as profit participation, contingent fees,
22 warrants, and other valuable contingent interests) as
23 the Administration considers appropriate to com-
24 pensate the Administration for the expenses of the

1 Administration (including amounts used from the
2 Fund) and the inherent risk of the support.

3 (d) COST TRANSFER AUTHORITY.—Amounts col-
4 lected from applicants by the Administration or otherwise
5 designated from the Fund for the cost of a loan or loan
6 guarantee shall be transferred by the Administration to
7 the respective credit program accounts.

8 **SEC. 10. GENERAL PROVISIONS.**

9 (a) IMMUNITY FROM IMPAIRMENT, LIMITATION, OR
10 RESTRICTION.—

11 (1) IN GENERAL.—All rights and remedies of
12 the Administration (including any rights and rem-
13 edies of the Administration on, under, or with re-
14 spect to any mortgage or any obligation secured by
15 a mortgage) shall be immune from impairment, limi-
16 tation, or restriction by or under—

17 (A) any law (other than a law enacted by
18 Congress expressly in limitation of this para-
19 graph) that becomes effective after the acquisi-
20 tion by the Administration of the subject or
21 property on, under, or with respect to which the
22 right or remedy arises or exists or would so
23 arise or exist in the absence of the law; or

24 (B) any administrative or other action that
25 becomes effective after the acquisition.

1 (2) STATE LAW.—The Administrator may con-
2 duct the business of the Administration without re-
3 gard to any qualification or law of any State relating
4 to incorporation.

5 (b) USE OF OTHER AGENCIES.—With the consent of
6 a department, establishment, or instrumentality (including
7 any field office), the Administration may—

8 (1) use and act through any department, estab-
9 lishment, or instrumentality; or

10 (2) use, and pay compensation for, information,
11 services, facilities, and personnel of the department,
12 establishment, or instrumentality.

13 (c) PROCUREMENT.—The Administrator shall be the
14 senior procurement officer for the Administration for pur-
15 poses of section 16(a) of the Office of Federal Procure-
16 ment Policy Act (41 U.S.C. 414(a)).

17 (d) FINANCIAL MATTERS.—

18 (1) INVESTMENTS.—Funds of the Administra-
19 tion may be invested in such investments as the
20 Board of Directors may prescribe.

21 (2) INTEREST.—Interest earnings from funds
22 described in paragraph (1) (other than fees collected
23 under section 9(e)) may be spent by the Administra-
24 tion only to such extent, or in such amounts, as are
25 provided in advance by appropriation Acts.

1 (3) FISCAL AGENTS.—Any Federal Reserve
2 bank or any bank as to which at the time of the des-
3 ignation of the bank by the Administrator there is
4 outstanding a designation by the Secretary of the
5 Treasury as a general or other depository of public
6 money, may be designated by the Administrator as
7 a depository or custodian or as a fiscal or other
8 agent of the Administration.

9 (e) JURISDICTION.—Notwithstanding section 1349 of
10 title 28, United States Code, or any other provision of
11 law—

12 (1) the Administration shall be considered a
13 corporation covered by sections 1345 and 1442 of
14 title 28, United States Code;

15 (2) all civil actions to which the Administration
16 is a party shall be considered to arise under the laws
17 of the United States, and the district courts of the
18 United States shall have original jurisdiction of all
19 such actions, without regard to amount or value;
20 and

21 (3) any civil or other action, case or controversy
22 in a court of a State, or in any court other than a
23 district court of the United States, to which the Ad-
24 ministration is a party may at any time before trial
25 be removed by the Administration, without the giv-

1 ing of any bond or security and by following any
2 procedure for removal of causes in effect at the time
3 of the removal—

4 (A) to the district court of the United
5 States for the district and division embracing
6 the place in which the same is pending; or

7 (B) if there is no such district court, to the
8 district court of the United States for the dis-
9 trict in which the principal office of the Admin-
10 istration is located.

11 (f) PERIODIC REPORTS.—Not later than 1 year after
12 commencement of operation of the Administration and at
13 least biannually thereafter, the Administrator shall submit
14 to the Committee on Energy and Natural Resources of
15 the Senate and the Committee on Energy and Commerce
16 of the House of Representatives a report that includes a
17 description of—

18 (1) the technologies supported by activities of
19 the Administration and how the activities advance
20 the purposes of this Act; and

21 (2) the performance of the Administration on
22 meeting the goals established under section 6.

23 (g) AUDITS BY THE COMPTROLLER GENERAL.—

24 (1) IN GENERAL.—The programs, activities, re-
25 ceipts, expenditures, and financial transactions of

1 the Administration shall be subject to audit by the
2 Comptroller General of the United States under
3 such rules and regulations as may be prescribed by
4 the Comptroller General.

5 (2) ACCESS.—The representatives of the Gov-
6 ernment Accountability Office shall—

7 (A) have access to the personnel and to all
8 books, accounts, documents, records (including
9 electronic records), reports, files, and all other
10 papers, automated data, things, or property be-
11 longing to, under the control of, or in use by
12 the Administration, or any agent, representa-
13 tive, attorney, advisor, or consultant retained by
14 the Administration, and necessary to facilitate
15 the audit;

16 (B) be afforded full facilities for verifying
17 transactions with the balances or securities held
18 by depositories, fiscal agents, and custodians;

19 (C) be authorized to obtain and duplicate
20 any such books, accounts, documents, records,
21 working papers, automated data and files, or
22 other information relevant to the audit without
23 cost to the Comptroller General; and

1 (D) have the right of access of the Comp-
2 troller General to such information pursuant to
3 section 716(c) of title 31, United States Code.

4 (3) ASSISTANCE AND COST.—

5 (A) IN GENERAL.—For the purpose of con-
6 ducting an audit under this subsection, the
7 Comptroller General may, in the discretion of
8 the Comptroller General, employ by contract,
9 without regard to section 3709 of the Revised
10 Statutes (41 U.S.C. 5), professional services of
11 firms and organizations of certified public ac-
12 countants for temporary periods or for special
13 purposes.

14 (B) REIMBURSEMENT.—

15 (i) IN GENERAL.—On the request of
16 the Comptroller General, the Administra-
17 tion shall reimburse the General Account-
18 ability Office for the full cost of any audit
19 conducted by the Comptroller General
20 under this subsection.

21 (ii) CREDITING.—Such reimburse-
22 ments shall—

23 (I) be credited to the appropria-
24 tion account entitled “Salaries and
25 Expenses, Government Accountability

1 Office” at the time at which the pay-
2 ment is received; and

3 (II) remain available until ex-
4 pended.

5 (h) ANNUAL INDEPENDENT AUDITS.—

6 (1) IN GENERAL.—The Administrator shall—

7 (A) have an annual independent audit
8 made of the financial statements of the Admin-
9 istration by an independent public accountant
10 in accordance with generally accepted auditing
11 standards; and

12 (B) submit to the Secretary the results of
13 the audit.

14 (2) CONTENT.—In conducting an audit under
15 this subsection, the independent public accountant
16 shall determine and report on whether the financial
17 statements of the Administration—

18 (A) are presented fairly in accordance with
19 generally accepted accounting principles; and

20 (B) comply with any disclosure require-
21 ments imposed under this Act.

22 (i) FINANCIAL REPORTS.—

23 (1) IN GENERAL.—The Administrator shall
24 submit to the Secretary annual and quarterly re-
25 ports of the financial condition and operations of the

1 Administration, which shall be in such form, contain
2 such information, and be submitted on such dates as
3 the Secretary shall require.

4 (2) CONTENTS OF ANNUAL REPORTS.—Each
5 annual report shall include—

6 (A) financial statements prepared in ac-
7 cordance with generally accepted accounting
8 principles;

9 (B) any supplemental information or alter-
10 native presentation that the Secretary may re-
11 quire; and

12 (C) an assessment (as of the end of the
13 most recent fiscal year of the Administration),
14 signed by the chief executive officer and chief
15 accounting or financial officer of the Adminis-
16 tration, of—

17 (i) the effectiveness of the internal
18 control structure and procedures of the
19 Administration; and

20 (ii) the compliance of the Administra-
21 tion with applicable safety and soundness
22 laws.

23 (3) SPECIAL REPORTS.—The Secretary may re-
24 quire the Administrator to submit other reports on
25 the condition (including financial condition), man-

1 agement, activities, or operations of the Administra-
2 tion, as the Secretary considers appropriate.

3 (4) ACCURACY.—Each report of financial condi-
4 tion shall contain a declaration by the Administrator
5 or any other officer designated by the Board of Di-
6 rectors of the Administration to make the declara-
7 tion, that the report is true and correct to the best
8 of the knowledge and belief of the officer.

9 (5) AVAILABILITY OF REPORTS.—Reports re-
10 quired under this section shall be published and
11 made publicly available as soon as is practicable
12 after receipt by the Secretary.

13 (j) SCOPE AND TERMINATION OF AUTHORITY.—

14 (1) NEW OBLIGATIONS.—The Administrator
15 shall not initiate any new obligations under this Act
16 on or after January 1, 2031.

17 (2) REVERSION TO SECRETARY.—The authori-
18 ties and obligations of the Administration shall re-
19 vert to the Secretary on January 1, 2031.

20 **SEC. 11. TRANSPARENCY FOR DELAYED LOAN GUARANTEE**
21 **APPLICATIONS.**

22 Section 1702 of the Energy Policy Act of 2005 (42
23 U.S.C. 16512) (as amended by section 5(e)) is amended
24 by adding at the end the following:

25 “(o) REPORTING REQUIREMENT.—

1 “(1) IN GENERAL.—If the Secretary fails to
2 make a final decision by the date that is 270 days
3 after the date on which the Secretary selects an ap-
4 plication to proceed to negotiations of terms and
5 conditions for issuance of a conditional commitment
6 for a loan guarantee application under this title, not
7 later than 7 days after that date, and for every 90-
8 day period thereafter, the Secretary shall—

9 “(A) prepare a status report for the period
10 covered by the report; and

11 “(B) submit the status report to—

12 “(i) the Committee on Energy and
13 Natural Resources of the Senate; and

14 “(ii) the Committee on Energy and
15 Commerce of the House of Representa-
16 tives.

17 “(2) CONTENTS.—The status report described
18 in paragraph (1) shall contain—

19 “(A) a description of each reason for the
20 delay of the application;

21 “(B) the specific office within the loan
22 guarantee program, the Office of Management
23 and Budget, or other office within the Adminis-
24 tration that, for the period covering the status
25 report, has reviewed the application; and

1 “(C) a detailed schedule for completion of
2 the application review.”.

3 **SEC. 12. LOAN GUARANTEES.**

4 Section 1703(b) of the Energy Policy Act of 2005
5 (42 U.S.C. 16513(b)) is amended by adding at the end
6 the following:

7 “(11) Substitute natural gas production facili-
8 ties, if the gas is produced—

9 “(A) from a solid feedstock through a gas-
10 ification process; and

11 “(B) in a manner that captures, for stor-
12 age or beneficial use, at least 90 percent of the
13 carbon produced through the gasification proc-
14 ess.”.

Calendar No. 127

112TH CONGRESS
1ST Session

S. 1510

[Report No. 112-47]

A BILL

To promote the domestic development and deployment of clean energy technologies, and for other purposes.

AUGUST 30 (legislative day, AUGUST 2), 2011

Read twice and placed on the calendar