

118TH CONGRESS
2D SESSION

S. 5421

To provide enhanced provisions for advanced nuclear energy projects receiving loan guarantees through the Department of Energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2024

Mr. RISCH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide enhanced provisions for advanced nuclear energy projects receiving loan guarantees through the Department of Energy, 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 “Accelerating Reliable
5 Capacity Act of 2024” or the “ARC Act of 2024”.

6 **SEC. 2. NEW NUCLEAR INVESTMENT ACCELERATOR PRO-**
7 **GRAM.**

8 (a) PURPOSE.—The purpose of this section is to in-
9 crease cost certainty for capital-intensive projects for
10 which a guarantee is provided under section 1703 or 1706

1 of the Energy Policy Act of 2005 (42 U.S.C. 16513,
2 16517).

3 (b) DEFINITIONS.—In this section:

4 (1) ACCOUNT.—The term “account” means the
5 New Nuclear Investment Accelerator Program Ac-
6 count established by subsection (c)(1).

7 (2) ADVANCED NUCLEAR ENERGY PROJECT.—
8 The term “advanced nuclear energy project” means
9 a project for 1 or more advanced nuclear reactors
10 (as defined in section 951(b) of the Energy Policy
11 Act of 2005 (42 U.S.C. 16271(b))).

12 (3) CLASS 2 ESTIMATE.—The term “Class 2 es-
13 timate” means an estimate of the cost of a quali-
14 fying project that is prepared in accordance with the
15 industry-specific cost estimate standards for nuclear
16 power industries described in Recommended Practice
17 115R–21 of the Association for the Advancement of
18 Cost Engineering entitled “Cost Estimate Classifica-
19 tion System—As Applied in Engineering, Procure-
20 ment, and Construction for the Nuclear Power In-
21 dustries” (or a successor document).

22 (4) DIRECTOR.—The term “Director” means
23 the Director of the Loan Programs Office.

24 (5) EXPECTED PAYMENT AMOUNT.—The term
25 “expected payment amount” means the amount that

1 the Director expects to pay to the Federal Financing
2 Bank under subsection (d)(2)(B) when a qualifying
3 project is placed in service.

4 (6) GUARANTEE.—The term “guarantee” has
5 the meaning given the term in section 1701 of the
6 Energy Policy Act of 2005 (42 U.S.C. 16511).

7 (7) LOAN PROGRAMS OFFICE.—The term
8 “Loan Programs Office” means the Loan Programs
9 Office of the Department of Energy.

10 (8) OVERRUN.—The term “overrun”, with re-
11 spect to the costs of a qualifying project, means any
12 costs in excess of the point base estimate of the
13 Class 2 estimate approved as described in paragraph
14 (11)(C)(iv).

15 (9) POINT BASE ESTIMATE.—The term “point
16 base estimate”, with respect to a Class 2 estimate,
17 means the value of the Class 2 estimate without ad-
18 justment for the accuracy range or contingency.

19 (10) PROJECT DELIVERY PLAN.—The term
20 “project delivery plan” means a project plan that in-
21 cludes—

22 (A) a project execution plan (as defined in
23 Recommended Practice 10S–90 of the Associa-
24 tion for the Advancement of Cost Engineering

entitled “Cost Engineering Terminology” (or a successor document));

(B) a contract risk allocation strategy that—

(i) aligns cost and risk incentives among all contracted stakeholders; and

(ii) follows—

(I) the best practices described in Recommended Practice 67R–11 of the Association for the Advancement of Cost Engineering entitled “Contract Risk Allocation—As Applied in Engineering, Procurement, and Construction” (or a successor document); or

(II) other appropriate industry best practices, as determined by the Secretary; and

(C) a plan for the division of responsibility between contracted stakeholders that describes roles and responsibilities for execution of that project plan.

(11) QUALIFYING PROJECT.—The term “qualifying project” means an advanced nuclear energy project—

1 (A) that is reasonably expected to be con-
2 structed on time and on budget;

3 (B) that has an expected cost equal to or
4 greater than \$2,500,000,000, according to the
5 Class 2 estimate for that advanced nuclear en-
6 ergy project; and

7 (C) with respect to which—

8 (i) the loan amount expected to be
9 guaranteed under section 1703 or 1706 of
10 the Energy Policy Act of 2005 (42 U.S.C.
11 16513, 16517) is—

12 (I) loaned through the Federal
13 Financing Bank; and

14 (II) equal to or greater than
15 \$2,000,000,000;

16 (ii) the borrower of that amount—

17 (I) has established and submitted
18 to the Director a project delivery plan;

19 (II) has established and sub-
20 mitted to the Secretary—

21 (aa) a Class 2 estimate
22 with—

23 (AA) basis of estimate
24 documentation for that
25 Class 2 estimate; and

1 (BB) a qualifying
 2 project cost risk analysis;

3 (bb) a resource-loaded inte-
 4 grated project schedule with—

5 (AA) basis of estimate
 6 documentation for that re-
 7 source-loaded integrated
 8 project schedule; and

9 (BB) a qualifying
 10 project schedule risk anal-
 11 ysis; and

12 (cc) a labor survey analysis
 13 report with—

14 (AA) basis of estimate
 15 documentation for that labor
 16 survey analysis report; and

17 (BB) a labor risk anal-
 18 ysis; and

19 (III) has established procedures
 20 with the Secretary to ensure enhanced
 21 project oversight, including—

22 (aa) a rolling forecast
 23 that—

24 (AA) updates the re-
 25 source-loaded integrated

1 project schedule not less fre-
2 quently than annually, in
3 alignment with the approved
4 changes in the applicable
5 change management pro-
6 gram; and

7 (BB) includes a new
8 qualifying project schedule
9 risk analysis to match the
10 most recent update; and

11 (bb) a quarterly meeting be-
12 tween the Secretary, the Direc-
13 tor, and senior-level representa-
14 tives of all contracted stake-
15 holders in the project to review
16 progress and, if necessary, decide
17 corrective actions and responsibil-
18 ities for implementation;

19 (iii) the Director has approved the
20 project delivery plan submitted under
21 clause (ii)(I) prior to financial close; and

22 (iv) the Secretary has approved the
23 project planning documents submitted
24 under clause (ii)(II) prior to financial
25 close.

1 (12) QUALIFYING PROJECT COST RISK ANAL-
2 YSIS.—The term “qualifying project cost risk anal-
3 ysis” means a cost risk analysis that follows—

4 (A) the best practices described in the doc-
5 ument of the Government Accountability Office
6 entitled “Cost Estimating and Assessment
7 Guide: Best Practices for Developing and Man-
8 aging Program Costs”, numbered GAO–20–
9 195G, and dated March 2020 (or a successor
10 document); or

11 (B) other appropriate industry best prac-
12 tices, as determined by the Secretary.

13 (13) QUALIFYING PROJECT SCHEDULE RISK
14 ANALYSIS.—The term “qualifying project schedule
15 risk analysis” means a schedule risk analysis that
16 follows—

17 (A) the document of the Government Ac-
18 countability Office entitled “Schedule Assess-
19 ment Guide: Best Practices for Project Sched-
20 ules”, numbered GAO–16–89G, and dated De-
21 cember 2015 (or a successor document); or

22 (B) other appropriate industry best prac-
23 tices, as determined by the Secretary.

24 (14) RESOURCE-LOADED INTEGRATED PROJECT
25 SCHEDULE.—The term “resource-loaded integrated

1 project schedule” means an approved schedule that
2 follows—

3 (A) the best practices described in the doc-
4 ument of the Government Accountability Office
5 entitled “Schedule Assessment Guide: Best
6 Practices for Project Schedules”, numbered
7 GAO–16–89G, and dated December 2015 (or a
8 successor document); or

9 (B) other appropriate industry best prac-
10 tices, as determined by the Secretary.

11 (15) ROLLING FORECAST.—The term “rolling
12 forecast” means a process for regularly updating a
13 resource-loaded integrated project schedule.

14 (16) SECRETARY.—The term “Secretary”
15 means the Secretary of Energy, acting through the
16 Director of the Office of Clean Energy Demonstra-
17 tions of the Department of Energy.

18 (c) NEW NUCLEAR INVESTMENT ACCELERATOR
19 PROGRAM ACCOUNT.—

20 (1) ESTABLISHMENT.—There is established in
21 the Loan Programs Office an account, to be known
22 as the “New Nuclear Investment Accelerator Pro-
23 gram Account”.

24 (2) MANAGEMENT.—The account shall be man-
25 aged by the Director.

1 (3) INITIAL FINANCING.—The following
2 amounts shall be transferred to the account on the
3 date of enactment of this Act:

4 (A) Of the unobligated balances of
5 amounts previously made available under the
6 heading “NUCLEAR ENERGY” under the head-
7 ing “ENERGY PROGRAMS” under the head-
8 ing “DEPARTMENT OF ENERGY” in divi-
9 sion J of the Infrastructure Investment and
10 Jobs Act (Public Law 117–58; 135 Stat. 1373),
11 \$1,100,000,000.

12 (B) Of the unobligated balance of amounts
13 previously made available under section
14 50144(a) of Public Law 117–169 (136 Stat.
15 2044), \$2,500,000,000.

16 (4) AVAILABILITY OF AMOUNTS.—Amounts
17 transferred to the account under paragraph (3) or
18 otherwise deposited in the account shall remain
19 available until expended.

20 (5) USE OF AMOUNTS.—The Director may use
21 amounts in the account to make payments pursuant
22 to subsection (d)(2)(B).

23 (6) OBLIGATION OF AMOUNTS.—Amounts in
24 the account shall be—

1 (A) contingently obligated to a borrower on
 2 the approval by the Secretary of a conditional
 3 commitment that includes satisfaction of the re-
 4 quirements for a qualifying project under this
 5 section as a condition of financial close, subject
 6 to the conditions that—

7 (i) the borrower shall be considered
 8 current so long as the borrower continues
 9 to make progress in good faith toward sat-
 10 isfying the requirements agreed upon in
 11 the conditional commitment, as determined
 12 by the Secretary; and

13 (ii) if the Secretary determines that
 14 the borrower is not making progress in
 15 good faith as described in clause (i), the
 16 contingently obligated amounts shall be
 17 made available to other borrowers; and

18 (B) obligated to the applicable borrower at
 19 financial close.

20 (7) OBLIGATION AND EXPENDITURE.—The ob-
 21 ligation of amounts in the account shall not be con-
 22 sidered to be an expenditure of those amounts unless
 23 the amounts are disbursed pursuant to subsection
 24 (d)(2)(B).

25 (d) OVERRUN LIABILITY.—

1 (1) BORROWER LIABILITY FOR INITIAL COST
2 OVERRUNS.—With respect to a qualifying project for
3 which a guarantee is provided under section 1703 or
4 1706 of the Energy Policy Act of 2005 (42 U.S.C.
5 16513, 16517), the borrower on the guaranteed loan
6 shall be responsible for all overruns until the cumu-
7 lative expenses of the qualifying project exceed 120
8 percent of the point base estimate of the Class 2 es-
9 timate.

10 (2) PAYMENT BY THE DIRECTOR.—

11 (A) EXPECTED PAYMENT AMOUNT.—With
12 respect to a qualifying project for which a guar-
13 antee is provided under section 1703 or 1706 of
14 the Energy Policy Act of 2005 (42 U.S.C.
15 16513, 16517), the Director shall update the
16 expected payment amount quarterly, subject to
17 the conditions that—

18 (i) cumulative expenses of the quali-
19 fying project have exceeded 120 percent of
20 the point base estimate of the Class 2 esti-
21 mate;

22 (ii) the quarterly increase to the ex-
23 pected payment amount does not exceed 50
24 percent of total expenses in that quarter
25 for the qualifying project;

1 (iii) the updated expected payment
 2 amount does not exceed the maximum pay-
 3 ment amount described in subparagraph
 4 (B)(ii);

5 (iv) the applicable guaranteed loan is
 6 not in default;

7 (v) the prospect of increasing the pay-
 8 ment amount does not incentivize unneces-
 9 sary spending; and

10 (vi) any increases to the payment
 11 amount are made in accordance with good
 12 governance principles.

13 (B) PAYMENT.—

14 (i) IN GENERAL.—When a qualifying
 15 project is placed in service, the Director
 16 shall—

17 (I) determine the final payment
 18 amount based on—

19 (aa) the expected payment
 20 amount determined under sub-
 21 paragraph (A); and

22 (bb) any additional cumu-
 23 lative expenses of the applicable
 24 qualifying project, determined in

1 accordance with that subpara-
2 graph; and

3 (II) pay that final payment
4 amount to the Federal Financing
5 Bank (as the lender of the applicable
6 guaranteed loan) from the account.

7 (ii) MAXIMUM PAYMENT AMOUNT.—
8 The maximum payment amount under this
9 subparagraph for any 1 qualifying project
10 may not exceed \$1,200,000,000.

11 (iii) APPLICATION OF PAYMENT.—A
12 payment under this subparagraph shall be
13 applied to the principal amount of the ap-
14 plicable guaranteed loan.

15 (iv) REQUIREMENT.—The Director
16 may make a payment under this subpara-
17 graph only if the applicable guaranteed
18 loan is not in default.

19 (C) TAX TREATMENT OF PAYMENTS.—For
20 purposes of the Internal Revenue Code of
21 1986—

22 (i) no amount shall be included in the
23 gross income of the borrower described in
24 paragraph (1) by reason of any payment
25 under subparagraph (B), and

1 (ii) in the case of any such borrower
 2 that is a partnership or S corporation, any
 3 amount excluded from income by reason of
 4 clause (i) shall be treated as tax exempt in-
 5 come for purposes of section 705 and 1366
 6 of the Internal Revenue Code of 1986.

7 (e) ENHANCED FINANCING TERMS FOR QUALIFYING
 8 PROJECTS.—

9 (1) IN GENERAL.—Notwithstanding title XVII
 10 of the Energy Policy Act of 2005 (42 U.S.C. 16511
 11 et seq.) or any other provision of law, the Director
 12 shall offer the enhanced financing terms described in
 13 paragraph (2) for a guarantee provided under sec-
 14 tion 1703 or 1706 of that Act (42 U.S.C. 16513,
 15 16517) with respect to a qualifying project.

16 (2) ENHANCED FINANCING TERMS DE-
 17 SCRIBED.—The enhanced financing terms referred
 18 to in paragraph (1) are the following:

19 (A) Notwithstanding section 1702(c) of the
 20 Energy Policy Act of 2005 (42 U.S.C.
 21 16512(c)), a guarantee may be an amount up
 22 to 200 percent of the point base estimate of the
 23 Class 2 estimate approved as described in sub-
 24 section (a)(10)(C)(iv) for the qualifying project
 25 that is the subject of the guarantee.

(B) The Director shall seek a commitment from the Federal Financing Bank (as lender of a guaranteed loan) to amend or restructure, if appropriate, the applicable guaranteed loan to reflect the revised principal amount after payment under subsection (d)(2)(B).

(3) INVESTMENT TAX CREDIT.—

(A) PUBLIC UTILITY PROPERTY.—Section 50(d)(2) of the Internal Revenue Code of 1986 is amended—

(i) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (ii), respectively, and by moving such clauses 2 ems to the right,

(ii) by striking “Section 46(f)” and inserting the following:

“(A) Section 46(f)”,

(iii) by striking “At the election of the taxpayer” and inserting the following:

“(B) At the election of the taxpayer”,

(iv) by striking “election under this paragraph” each place it appears and inserting “election under this subparagraph”, and

1 (v) by adding at the end the following
2 new subparagraph:

3 “(C) At the election of the taxpayer, this
4 paragraph shall not apply to any qualified
5 project (as defined in section 2(b) of the ARC
6 Act of 2024). Rules similar to the rules of
7 clauses (i) and (ii) of subparagraph (B) shall
8 apply for purposes of an election under this
9 subparagraph.”.

10 (B) EFFECTIVE DATE.—The amendments
11 made by this paragraph shall apply to taxable
12 years beginning after the date of the enactment
13 of this Act.

14 (f) SUBMISSION OF MEETING MINUTES TO CON-
15 GRESS.—Not later than 7 days after each quarterly meet-
16 ing described in subsection (b)(11)(B)(ii)(III)(bb), the
17 meeting minutes, which have been approved by the con-
18 tracted stakeholders in the applicable qualifying project,
19 shall be submitted by the Secretary to—

20 (1) the Committee on Energy and Natural Re-
21 sources and the Committee on Appropriations of the
22 Senate; and

23 (2) the Committee on Energy and Commerce
24 and the Committee on Appropriations of the House
25 of Representatives.

1 **SEC. 3. OTHER RELATED PROVISIONS.**

2 (a) EXCEPTION TO DENIAL OF DOUBLE BENEFIT
3 PROVISION FOR CERTAIN UTILITIES AND MILITARY IN-
4 STALLATIONS.—Section 50141(d)(3) of Public Law 117–
5 169 (136 Stat. 2043) is amended—

6 (1) in subparagraph (C), by striking “or” at
7 the end;

8 (2) in subparagraph (D), by striking the period
9 at the end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(E) projects partnering with—

12 “(i) a Federal power marketing ad-
13 ministration or the Tennessee Valley Au-
14 thority;

15 “(ii) an entity that procures energy
16 for a military installation (as defined in
17 section 2801(c) of title 10, United States
18 Code) that is managed by the Secretary of
19 Defense or a contractor of the Secretary of
20 Defense; or

21 “(iii) the General Services Adminis-
22 tration for the purpose of energy procure-
23 ment.”.

24 (b) ALLOWING GOVERNMENT FACILITIES AS
25 BROWNFIELD SITES.—Section 45(b)(11)(B)(i) of the In-
26 ternal Revenue Code of 1986 is amended by striking “(B),

1 and” and inserting “(B) (excluding clauses (ii) and (vii),
2 and clause (i) to the extent that clause (i) applies to a
3 facility described in clause (ii) or (vii), of that subpara-
4 graph), and”.

○