

111TH CONGRESS
1ST SESSION

S. 1574

To establish a Clean Energy for Homes and Buildings Program in the Department of Energy to provide financial assistance to promote residential-, commercial-, and industrial-scale energy efficiency and on-site renewable technologies.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2009

Mr. MERKLEY (for himself and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish a Clean Energy for Homes and Buildings Program in the Department of Energy to provide financial assistance to promote residential-, commercial-, and industrial-scale energy efficiency and on-site renewable technologies.

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 for
5 Homes and Buildings Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) homes and commercial or industrial build-
2 ings in the United States consume significant quan-
3 tities of energy, including energy for electricity and
4 heating, the generation or combustion of which cre-
5 ates significant quantities of greenhouse gas emis-
6 sions;

7 (2) in most cases, energy efficiency is the most
8 cost-effective and rapidly deployable strategy for re-
9 ducing greenhouse gas emissions, energy demand,
10 and the need for long-distance transmission of en-
11 ergy;

12 (3) on-site renewable energy generation reduces
13 greenhouse gas emissions, demand on the electricity
14 transmission grid, and the need for long-distance
15 transmission of energy;

16 (4) many energy efficiency measures and on-
17 site renewable energy generation systems produce a
18 net cost savings over the course of the useful life of
19 the measures and systems, and often over a shorter
20 time frame, but the initial expense required to pur-
21 chase and install the measures and systems is often
22 a significant barrier to widespread investment in the
23 measures and systems;

24 (5) financial products, financing programs, and
25 other programs that reduce or eliminate the need for

1 the initial expense described in paragraph (4) can
2 permit building owners to invest in measures and
3 systems that reduce total energy costs and realize
4 net cost savings at the time of the installation of the
5 measures and systems, defer capital expenditure,
6 and enhance the value, comfort, and sustainability of
7 the property of the owners; and

8 (6) State and local governments, utilities, en-
9 ergy efficiency and renewable energy service pro-
10 viders, banks, finance companies, community devel-
11 opment organizations, and other entities are devel-
12 oping financial products and programs to provide fi-
13 nancing assistance for building owners to encourage
14 the use of the measures and systems described in
15 paragraph (4), including programs that allow repay-
16 ment of loans under programs described in para-
17 graph (5) through utility bills, or through property-
18 based assessments, taxes, or charges, to facilitate
19 loan repayment for the benefit of building owners
20 and lenders or program sponsors.

21 **SEC. 3. PURPOSE.**

22 The purpose of this Act is to encourage widespread
23 deployment of energy efficiency and on-site renewable en-
24 ergy technologies in homes and other buildings throughout
25 the United States through the establishment of a self-sus-

1 taining Clean Energy for Homes and Buildings Program
2 that can—

3 (1) encourage the widespread availability of fi-
4 nancial products and programs with attractive rates
5 and terms that significantly reduce or eliminate up-
6 front expenses to allow building owners (including
7 homeowners, business owners, owners of multifamily
8 housing, owners of multi-tenant commercial prop-
9 erties, and owners of other residential, commercial,
10 or industrial properties) to invest in energy effi-
11 ciency measures and on-site renewable energy sys-
12 tems with payback periods of up to 25 years or the
13 useful life of such a measure or system by providing
14 credit support, credit enhancement, secondary mar-
15 kets, and other support to originators of the finan-
16 cial products and sponsors of the financing pro-
17 grams; and

18 (2) help building owners invest in measures and
19 systems that reduce energy costs, in many cases cre-
20 ating a net cost savings that can be realized in the
21 short-term, and may also allow building owners to
22 defer capital expenditures and increase the value,
23 comfort, and sustainability of the property of the
24 owners.

1 **SEC. 4. DEFINITIONS.**

2 In this Act:

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

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

9 (3) **LOAN GUARANTEE.**—The term “loan guar-
10 antee” has the meaning given the term in section
11 502 of the Federal Credit Reform Act of 1990 (2
12 U.S.C. 661a).

13 (4) **PROGRAM.**—The term “Program” means
14 the Clean Energy for Homes and Buildings Program
15 established by section 6.

16 (5) **SECRETARY.**—The term “Secretary” means
17 the Secretary of Energy.

18 (6) **SECURITY.**—The term “security” has the
19 meaning given the term in section 2 of the Securities
20 Act of 1933 (15 U.S.C. 77b).

21 (7) **STATE.**—The term “State” means—

22 (A) a State;

23 (B) the District of Columbia;

24 (C) the Commonwealth of Puerto Rico;

25 and

1 (D) any other territory or possession of the
2 United States.

3 **SEC. 5. CLEAN ENERGY FOR HOMES AND BUILDINGS**
4 **GOALS.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of enactment of this Act, the Secretary shall develop
7 and publish for review and comment in the Federal Reg-
8 ister near-, medium-, and long-term goals (including nu-
9 merical performance targets at appropriate intervals to
10 measure progress toward those goals) for—

11 (1)(A) a minimum number of homes to be ret-
12 rofitted through energy efficiency measures or to
13 have on-site renewable energy systems added;

14 (B) a minimum number of other buildings, by
15 type, to be retrofitted through energy efficiency
16 measures or to have on-site renewable energy sys-
17 tems added; and

18 (C) the number of on-site solar energy, wind
19 energy, and geothermal heat pump systems to be in-
20 stalled; and

21 (2) as a result of those retrofits, additions, and
22 installations—

23 (A) the quantity by which use of grid-sup-
24 plied electricity, natural gas, home heating oil,
25 and other fuels will be reduced;

1 (B) the quantity by which total fossil fuel
 2 dependence in the buildings sector will be re-
 3 duced;

4 (C) the quantity by which greenhouse gas
 5 emissions will be reduced;

6 (D) the number of jobs that will be cre-
 7 ated; and

8 (E) the estimated total energy cost savings
 9 for building owners.

10 (b) ESTIMATES BY ORIGINATORS OR SPONSORS.—

11 The Secretary may rely on reasonable estimates made by
 12 originators of financial products or sponsors of financing
 13 programs for tracking progress toward meeting the goals
 14 established under this section instead of requiring building
 15 owners to monitor and report on the progress.

16 **SEC. 6. CLEAN ENERGY FOR HOMES AND BUILDINGS PRO-**
 17 **GRAM.**

18 (a) ESTABLISHMENT.—There is established in the
 19 Department of Energy a program to be known as the
 20 Clean Energy for Homes and Buildings Program.

21 (b) ELIGIBILITY CRITERIA.—

22 (1) IN GENERAL.—In administering the Pro-
 23 gram, the Secretary shall establish eligibility criteria
 24 for applicants for financial assistance under sub-

1 section (c) who can offer financial products and pro-
2 grams consistent with the purposes of this Act.

3 (2) CRITERIA.—Criteria for applicants shall—

4 (A) take into account—

5 (i) the number and type of buildings
6 that can be served by the applicant, the
7 size of the potential market, and the scope
8 of the program (in terms of measures or
9 technologies to be used);

10 (ii) the ability of the applicant to suc-
11 cessfully execute the proposed program
12 and maintain the performance of the pro-
13 posed projects and investments;

14 (iii) financial criteria, as applicable,
15 including the ability of the applicant to
16 raise private capital or other sources of
17 funds for the proposed program;

18 (iv) criteria that enable the Secretary
19 to determine sound program design, in-
20 cluding—

21 (I) an assurance of credible en-
22 ergy efficiency or renewable energy
23 generation performance; and

24 (II) financial product or program
25 design that effectively reduces barriers

1 posed by traditional financing pro-
2 grams;

3 (v) such criteria, standards, guide-
4 lines, and mechanisms as will enable the
5 Secretary, to the maximum extent prac-
6 ticable, to communicate to program spon-
7 sors and originators, servicers, and sellers
8 of financial obligations the eligibility of
9 loans for resale;

10 (vi) the ability of the applicant to re-
11 port relevant data on program perform-
12 ance; and

13 (vii) the ability of the applicant to use
14 incentives or marketing techniques that are
15 likely to result in successful market pene-
16 tration; and

17 (B) encourage—

18 (i) use of technologies that are either
19 well-established or new, but demonstrated
20 to be reliable;

21 (ii) applicants that can offer building
22 owners payment plans generally designed
23 to permit the combination of energy pay-
24 ments and assessments or charges from
25 the installation or payments associated

1 with financing to be lower than the energy
2 payments prior to installing energy effi-
3 ciency measures or on-site renewable en-
4 ergy technologies;

5 (iii) applicants that will use repay-
6 ment mechanisms convenient for building
7 owners, such as tax-increment financing,
8 special tax districts, on-utility-bill repay-
9 ment, or other mechanisms;

10 (iv) applicants that can provide con-
11 venience for building owners by combining
12 participation in the lending program
13 with—

14 (I) processing for tax credits and
15 other incentives; and

16 (II) technical assistance in select-
17 ing and working with vendors to pro-
18 vide energy efficiency measures or on-
19 site renewable energy generation sys-
20 tems;

21 (v) applicants the projects of which
22 will use contractors that hire within a 50-
23 mile radius of the project, or as close as is
24 practicable;

1 (vi) applicants that will use materials
2 and technologies manufactured in the
3 United States;

4 (vii) partnerships with or other in-
5 volvement of State workforce investment
6 boards, labor organizations, community-
7 based organizations, State-approved ap-
8 prenticeship programs, and other job train-
9 ing entities; and

10 (viii) applicants that can provide fi-
11 nancing programs or financial products
12 that mitigate barriers other than the initial
13 expense of installing measures or tech-
14 nologies, such as unfavorable lease terms.

15 (3) DIVERSE PORTFOLIO.—In establishing cri-
16 teria and selecting applicants to receive financial as-
17 sistance under subsection (c), to the maximum ex-
18 tent practicable, the Secretary shall select a portfolio
19 of investments that reaches a diversity of building
20 owners, including—

21 (A) individual homeowners;

22 (B) multifamily apartment building own-
23 ers;

24 (C) condominium owners associations;

1 (D) commercial building owners, including
2 multi-tenant commercial properties; and

3 (E) industrial building owners.

4 (c) FINANCIAL ASSISTANCE.—

5 (1) IN GENERAL.—For applicants determined
6 to be eligible under criteria established under sub-
7 section (b), the Secretary may provide financial as-
8 sistance in the form of direct loans, letters of credit,
9 loan guarantees, insurance products, other credit en-
10 hancements or debt instruments (including
11 securitization or indirect credit support), or other fi-
12 nancial products to promote the widespread deploy-
13 ment of, and mobilize private sector support of cred-
14 it and investment institutions for, energy efficiency
15 measures and on-site renewable energy generation
16 systems in buildings.

17 (2) FINANCIAL PRODUCTS.—The Secretary—

18 (A) in cooperation with Federal, State,
19 local, and private sector entities, shall develop
20 debt instruments that provide for the aggrega-
21 tion of, or directly aggregate, programs for the
22 deployment of energy efficiency measures and
23 on-site renewable energy generation systems on
24 a scale appropriate for residential, commercial,
25 or industrial applications; and

1 (B) may insure, guarantee, purchase, and
2 make commitments to purchase any debt in-
3 strument associated with the deployment of
4 clean energy technologies (including subordi-
5 nated securities) for the purpose of enhancing
6 the availability of private financing for the de-
7 ployment of energy efficiency measures and on-
8 site renewable energy generation systems.

9 (3) APPLICATION REVIEW.—

10 (A) IN GENERAL.—To the maximum ex-
11 tent practicable and consistent with sound busi-
12 ness practices, the Secretary shall seek to expe-
13 dite reviews of applications for credit support
14 under this Act in order to communicate to ap-
15 plicants in a timely manner the likelihood of
16 support so that the applicants can seek private
17 capital in order to receive final approval.

18 (B) MECHANISMS.—In carrying out this
19 paragraph, the Secretary shall consider using
20 mechanisms such as—

- 21 (i) a system for conditional pre-ap-
22 proval that informs applicants that final
23 applicants will be approved, if established
24 conditions are met;

1 (ii) clear guidelines that communicate
2 to applicants what level of performance on
3 eligibility criteria will ensure approval for
4 credit support or resale;

5 (iii) in the case of an applicant port-
6 folio of more than 300 loans or other fi-
7 nancial arrangement, an expedited review
8 based on statistical sampling to ensure
9 that the loan or other financial arrange-
10 ment meets the eligibility criteria; and

11 (iv) in the case of an applicant with a
12 demonstrated track record with respect to
13 successfully originating eligible loans or
14 other financial arrangements and who
15 meets appropriate other criteria deter-
16 mined by the Secretary, a system for dele-
17 gating responsibility for meeting eligibility
18 criteria that includes appropriate protec-
19 tions such as buy-back mechanisms in the
20 event criteria are determined not to have
21 been met.

22 (C) DISPOSITION OF DEBT OR INTER-
23 EST.—The Secretary may acquire, hold, and
24 sell or otherwise dispose of, pursuant to com-
25 mitments or otherwise, any debt associated with

1 the deployment of clean energy technologies or
2 interest in the debt.

3 (D) PRICING.—

4 (i) IN GENERAL.—The Secretary may
5 establish requirements, and impose charges
6 or fees, which may be regarded as elements
7 of pricing, for different classes of appli-
8 cants, originators, sellers, servicers, or
9 services.

10 (ii) CLASSIFICATION OF APPLICANTS,
11 ORIGINATORS, SELLERS AND SERVICERS.—
12 For the purpose of clause (i), the Secretary
13 may classify applicants, originators, sellers
14 and servicers as necessary to promote
15 transparency and liquidity and properly
16 characterize the risk of default.

17 (E) SECONDARY MARKET SUPPORT.—

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

(ii) AUTHORIZED ACTIONS.—On such terms and conditions as the Secretary may prescribe, the Secretary may—

(I) give security;

(II) insure;

(III) guarantee;

(IV) purchase;

(V) sell;

(VI) pay interest or other return;

and

(VII) issue notes, debentures, bonds, or other obligations or securities.

(F) LENDING ACTIVITIES.—

(i) IN GENERAL.—The Secretary shall determine—

(I) the volume of the lending activities of the Program; and

(II) the types of loan ratios, risk profiles, interest rates, maturities, and charges or fees in the secondary market operations of the Program.

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

1 (I) providing an attractive invest-
2 ment environment for programs that
3 install energy efficiency measures or
4 on-site renewable energy generation
5 technologies;

6 (II) making the operations of the
7 Program self-supporting over the long
8 term; and

9 (III) advancing the goals estab-
10 lished under this Act.

11 (G) EXEMPT SECURITIES.—All securities
12 issued, insured, or guaranteed by the Secretary
13 shall, to the same extent as securities that are
14 direct obligations of or obligations guaranteed
15 as to principal or interest by the United States,
16 be considered to be exempt securities within the
17 meaning of the laws administered by the Secu-
18 rities and Exchange Commission.

19 **SEC. 7. GENERAL PROVISIONS.**

20 (a) PERIODIC REPORTS.—Not later than 1 year after
21 commencement of operation of the Program and at least
22 biannually thereafter, the Secretary shall submit to the
23 Committee on Energy and Natural Resources of the Sen-
24 ate and the Committee on Energy and Commerce of the
25 House of Representatives a report that includes a descrip-

1 tion of the Program in meeting the purpose and goals es-
 2 tablished by or pursuant to this Act.

3 (b) AUDITS BY THE COMPTROLLER GENERAL.—

4 (1) IN GENERAL.—The programs, activities, re-
 5 cepts, expenditures, and financial transactions of
 6 the Program shall be subject to audit by the Comp-
 7 troller General of the United States under such rules
 8 and regulations as may be prescribed by the Comp-
 9 troller General.

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

12 (A) have access to the personnel and to all
 13 books, accounts, documents, records (including
 14 electronic records), reports, files, and all other
 15 papers, automated data, things, or property be-
 16 longing to, under the control of, or in use by
 17 the Program, or any agent, representative, at-
 18 torney, advisor, or consultant retained by the
 19 Program, and necessary to facilitate the audit;

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

23 (C) be authorized to obtain and duplicate
 24 any such books, accounts, documents, records,
 25 working papers, automated data and files, or

1 other information relevant to the audit without
2 cost to the Comptroller General; and

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

6 (3) ASSISTANCE AND COST.—

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

16 (B) REIMBURSEMENT.—

17 (i) IN GENERAL.—On the request of
18 the Comptroller General, the Secretary
19 shall reimburse the General Accountability
20 Office for the full cost of any audit con-
21 ducted by the Comptroller General under
22 this subsection.

23 (ii) CREDITING.—Such reimburse-
24 ments shall—

1 (I) be credited to the appropria-
2 tion account entitled “Salaries and
3 Expenses, Government Accountability
4 Office” at the time at which the pay-
5 ment is received; and

6 (II) remain available until ex-
7 pended.

8 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

9 There is authorized to be appropriated to carry out
10 this Act \$2,000,000,000.

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