

111TH CONGRESS
2D SESSION

S. 3746

To amend the Energy Policy Act of 2005 to improve the loan guarantee program of the Department of Energy under title XVII of that Act.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. BINGAMAN (for himself, Mrs. SHAHEEN, Mrs. BOXER, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Energy Policy Act of 2005 to improve the loan guarantee program of the Department of Energy under title XVII of that Act.

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. INCENTIVES FOR INNOVATIVE TECHNOLOGIES**

4 **LOAN GUARANTEE PROGRAM.**

5 (a) SPECIFIC APPROPRIATION OR CONTRIBUTION.—

6 Section 1702 of the Energy Policy Act of 2005 (42 U.S.C.
7 16512) is amended—

8 (1) by striking subsection (b) and inserting the
9 following:

1 “(b) SPECIFIC APPROPRIATION OR CONTRIBU-
2 TION.—

3 “(1) IN GENERAL.—No guarantee shall be
4 made unless—

5 “(A) an appropriation for the cost of the
6 guarantee has been made;

7 “(B) the Secretary has received from the
8 borrower a payment in full for the cost of the
9 guarantee and deposited the payment into the
10 Treasury; or

11 “(C) a combination of appropriations
12 under subparagraph (A) or payments from the
13 borrower under subparagraph (B) has been
14 made that is sufficient to cover the cost of the
15 guarantee.

16 “(2) LIMITATION.—The source of payments re-
17 ceived from a borrower under subparagraph (B) or
18 (C) of paragraph (1) shall not be a loan or other
19 debt obligation that is made or guaranteed by the
20 Federal Government.”; and

21 (2) by adding at the end the following:

22 “(l) CREDIT REPORT.—If, in the opinion of the Sec-
23 retary, a third-party credit rating of the applicant or
24 project is not relevant to the determination of the credit
25 risk of a project, if the project costs are not projected to

1 exceed \$100,000,000, and the applicant agrees to accept
2 the credit rating assigned to the applicant by the Sec-
3 retary, the Secretary may waive any otherwise applicable
4 requirement (including any requirement described in part
5 609 of title 10, Code of Federal Regulations) to provide
6 a third-party credit report.

7 “(m) DIRECT HIRE AUTHORITY.—

8 “(1) IN GENERAL.—Notwithstanding sections
9 3304 and sections 3309 through 3318 of title 5,
10 United States Code, the head of the loan guarantee
11 program under this title (referred to in this sub-
12 section as the ‘Executive Director’) may, on a deter-
13 mination that there is a severe shortage of can-
14 didates or a severe hiring need for particular posi-
15 tions to carry out the functions of this title, recruit
16 and directly appoint highly qualified critical per-
17 sonnel with specialized knowledge important to the
18 function of the programs under this title into the
19 competitive service.

20 “(2) EXCEPTION.—The authority granted
21 under paragraph (1) shall not apply to positions in
22 the excepted service or the Senior Executive Service.

23 “(3) REQUIREMENTS.—In exercising the au-
24 thority granted under paragraph (1), the Executive

1 Director shall ensure that any action taken by the
2 Executive Director—

3 “(A) is consistent with the merit principles
4 of section 2301 of title 5, United States Code;
5 and

6 “(B) complies with the public notice re-
7 quirements of section 3327 of title 5, United
8 States Code.

9 “(4) SUNSET.—The authority provided under
10 paragraph (1) shall terminate on September 30,
11 2011.

12 “(n) PROFESSIONAL ADVISORS.—The Secretary
13 may—

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

17 “(2) require applicants for and recipients of
18 loan guarantees to pay all fees and expenses of the
19 agents and advisors; and

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

1 “(o) MULTIPLE SITES.—Notwithstanding any con-
 2 trary requirement (including any provision under part
 3 609.12 of title 10, Code of Federal Regulations) an eligi-
 4 ble project may be located on 2 or more non-contiguous
 5 sites in the United States.”.

6 (b) APPLICATIONS FOR MULTIPLE ELIGIBLE
 7 PROJECTS.—Section 1705 of the Energy Policy Act of
 8 2005 (42 U.S.C. 16516) is amended—

9 (1) by redesignating subsection (e) as sub-
 10 section (f); and

11 (2) by inserting after subsection (d) the fol-
 12 lowing:

13 “(e) MULTIPLE APPLICATIONS.—Notwithstanding
 14 any contrary requirement (including any provision under
 15 part 609.3(a) of title 10, Code of Federal Regulations),
 16 a project applicant or sponsor of an eligible project may
 17 submit an application for more than 1 eligible project
 18 under this section.”.

19 (c) ENERGY EFFICIENCY LOAN GUARANTEES.—Sec-
 20 tion 1705(a) of the Energy Policy Act of 2005 (42 U.S.C.
 21 16516(a)) is amended by adding at the end the following:

22 “(4) Energy efficiency projects, including
 23 projects to retrofit residential, commercial, and in-
 24 dustrial buildings, facilities, and equipment.”.

1 (d) FEES; PROFESSIONAL ADVISORS.—Section 136
2 of the Energy Independence and Security Act of 2007 (42
3 U.S.C. 17013) is amended—

4 (1) by striking subsection (f) and inserting the
5 following:

6 “(f) FEES.—Except as otherwise permitted under
7 subsection (i), administrative costs shall be not more than
8 \$100,000 or 10 basis points of the loan.”;

9 (2) by redesignating subsections (i) and (j) as
10 subsections (j) and (k), respectively; and

11 (3) by inserting after subsection (h) the end the
12 following:

13 “(i) PROFESSIONAL ADVISORS.—The Secretary
14 may—

15 “(1) retain agents and legal and other profes-
16 sional advisors in connection with guarantees and re-
17 lated activities authorized under this section;

18 “(2) require applicants for and recipients of
19 loan guarantees to pay directly, or through the pay-
20 ment of fees to the Secretary, all fees and expenses
21 of the agents and advisors; and

22 “(3) notwithstanding any other provision of
23 law, select such advisors in such manner and using
24 such procedures as the Secretary determines to be

- 1 appropriate to protect the interests of the United
- 2 States and achieve the purposes of this section.”.

