

116TH CONGRESS
1ST SESSION

H. R. 4905

To direct the Secretary of Transportation to carry out a program to provide secured loans to private entities to carry out projects for the transportation of anthropogenic carbon dioxide, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 2019

Mrs. BUSTOS introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To direct the Secretary of Transportation to carry out a program to provide secured loans to private entities to carry out projects for the transportation of anthropogenic carbon dioxide, 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 “Investing in Energy
5 Systems for the Transport of CO2 Act of 2019”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that each State should
8 consider—

1 (1) qualifying all anthropogenic carbon dioxide
2 pipelines as pollution control devices under the laws
3 and regulations of such State; and

4 (2) the establishment of a minimum of a 10-
5 year waiver of ad valorem and property taxes for
6 such pipelines.

7 **SEC. 3. CARBON TRANSPORT INFRASTRUCTURE FINANC-**
8 **ING PROGRAM.**

9 (a) IN GENERAL.—The Secretary of Transportation
10 shall carry out a program to provide Federal credit instru-
11 ments to private entities to carry out projects for the con-
12 struction of common carrier pipelines for the transpor-
13 tation of anthropogenic carbon dioxide as a supercritical
14 fluid.

15 (b) APPLICATIONS.—To be eligible to receive assist-
16 ance under this section, an entity shall submit to the Sec-
17 retary an application at such time, in such manner, and
18 containing such information as the Secretary may require.

19 (c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The fol-
20 lowing projects may be carried out with amounts made
21 available under this section:

22 (1) A project to construct, or increase the di-
23 ameter of, a common carrier trunk pipeline for the
24 transportation of anthropogenic carbon dioxide as a
25 supercritical fluid between one or more—

1 (A) carbon dioxide capture or production
2 facilities;

3 (B) carbon dioxide pipelines;

4 (C) carbon dioxide storage facilities; or

5 (D) carbon dioxide utilization facilities.

6 (2) A project to construct common carrier feed-
7 er pipelines for the transportation of anthropogenic
8 carbon dioxide as a supercritical fluid between cap-
9 ture, production, refining, or manufacturing facilities
10 or qualified facilities and a trunk pipeline described
11 in paragraph (1).

12 (d) DETERMINATION OF ELIGIBILITY AND PROJECT
13 SELECTION.—To be eligible to receive financial assistance
14 under this section, an entity shall meet the following cri-
15 teria, as determined by the Secretary:

16 (1) CREDIT WORTHINESS.—

17 (A) IN GENERAL.—The entity shall be
18 creditworthy, as determined by the Secretary.

19 (B) CONSIDERATIONS.—In determining
20 the creditworthiness of an entity, the Secretary
21 shall take into consideration relevant factors,
22 including—

23 (i) the terms, conditions, financial
24 structure, and security features of the pro-
25 posed financing;

- 1 (ii) the dedicated revenue sources that
2 will secure or fund the project obligations;
3 (iii) the financial assumptions upon
4 which the project is based; and
5 (iv) the financial soundness and credit
6 history of the entity.

7 (C) SECURITY FEATURES.—The Secretary
8 shall ensure that any financing for the project
9 has appropriate security features, such as a
10 rate covenant, supporting the project obliga-
11 tions to ensure repayment.

12 (D) RATING OPINION LETTERS.—

13 (i) PRELIMINARY RATING OPINION
14 LETTER.—The Secretary shall require each
15 entity to provide, at the time of applica-
16 tion, a preliminary rating opinion letter
17 from at least 1 rating agency indicating
18 that the senior obligations of the project
19 (which may be the Federal credit instru-
20 ment) have the potential to achieve an in-
21 vestment-grade rating.

22 (ii) FINAL RATING OPINION LET-
23 TER.—The Secretary shall require each en-
24 tity to provide, prior to final acceptance
25 and financing of the project, final rating

1 opinion letters from at least 2 rating agen-
2 cies indicating that the senior obligations
3 of the project have an investment-grade
4 rating.

5 (2) PROPOSED PROJECT.—The Secretary shall
6 ensure that any common carrier trunk pipeline con-
7 structed or increased under this section has, or is in-
8 creased to, an external diameter of not less than 30
9 inches.

10 (e) SELECTION OF PROJECTS.—

11 (1) IN GENERAL.—In carrying out the program
12 under subsection (a), the Secretary may not provide
13 a secured loan to finance more than one common
14 carrier trunk pipeline project the majority of the
15 pipeline length of which will be constructed in a sin-
16 gle census region.

17 (2) CENSUS REGION DEFINED.—For purposes
18 of this section, the term “census region” means 1 of
19 the 4 census regions (northeast, south, midwest, and
20 west) that are designated as census regions by the
21 Bureau of the Census as of the date of enactment
22 of this Act.

23 (3) PRIORITY.—In carrying out the program
24 under subsection (a) for projects described in (c)(1),
25 the Secretary shall give priority to applications that

1 propose construction of a common carrier trunk
2 pipeline project in an area where pipelines or other
3 linear infrastructure already exist.

4 (f) SECURED LOANS.—

5 (1) AGREEMENTS.—

6 (A) IN GENERAL.—Subject to paragraphs
7 (2) and (3), the Secretary may enter into agree-
8 ments with 1 or more entities to make secured
9 loans, the proceeds of which shall be used to fi-
10 nance project costs of any project selected
11 under this section.

12 (B) FINANCIAL RISK ASSESSMENT.—Be-
13 fore entering into an agreement under this sub-
14 section for a secured loan, the Secretary, in
15 consultation with the Director of the Office of
16 Management and Budget and each rating agen-
17 cy providing a rating opinion letter under this
18 section, shall determine an appropriate capital
19 reserve subsidy amount for the secured loan,
20 taking into account each such rating opinion
21 letter.

22 (C) INVESTMENT-GRADE RATING REQUIRE-
23 MENT.—The execution of a secured loan under
24 this section shall be contingent on receipt by

1 the senior obligations of the project of an in-
2 vestment-grade rating.

3 (2) TERMS AND LIMITATIONS.—

4 (A) IN GENERAL.—A secured loan pro-
5 vided for a project under this section shall be
6 subject to such terms and conditions, and con-
7 tain such covenants, representations, warran-
8 ties, and requirements (including requirements
9 for audits), as the Secretary determines to be
10 appropriate.

11 (B) MAXIMUM AMOUNT.—The amount of a
12 secured loan under this section shall not exceed
13 80 percent of the reasonably anticipated project
14 costs.

15 (C) PAYMENT.—A secured loan under this
16 section—

17 (i) shall be payable, in whole or in
18 part, from user fees or other dedicated rev-
19 enue sources that also secure the senior
20 project obligations of the relevant project;

21 (ii) shall include a rate covenant, cov-
22 erage requirement, or similar security fea-
23 ture supporting the project obligations;
24 and

1 (iii) may have a lien on revenues de-
2 scribed in subparagraph (A), subject to
3 any lien securing project obligations.

4 (D) INTEREST RATE.—The interest rate
5 on a secured loan under this section shall be
6 not less than the yield on United States Treas-
7 ury securities of a similar maturity to the ma-
8 turity of the secured loan on the date of execu-
9 tion of the loan agreement.

10 (E) MATURITY DATE.—The final maturity
11 date of a secured loan under this section shall
12 be the earlier of—

13 (i) the date that is 35 years after the
14 date of substantial completion of the rel-
15 evant project (as determined by the Sec-
16 retary); or

17 (ii) if the useful life of the project (as
18 determined by the Secretary) is less than
19 35 years, the useful life the project.

20 (F) NONSUBORDINATION.—A secured loan
21 under this section shall not be subordinated to
22 the claims of any holder of project obligations
23 in the event of bankruptcy, insolvency, or liq-
24 uidation of the entity carrying out the project.

1 (G) FINANCING FEES.—On request of an
2 entity, any fees to be paid by the entity under
3 this section shall be financed as part of the
4 loan.

5 (3) REPAYMENT.—

6 (A) SCHEDULE.—The Secretary shall es-
7 tablish a repayment schedule for each secured
8 loan provided under this section, based on the
9 projected cash flow from project revenues and
10 other repayment sources.

11 (B) COMMENCEMENT.—Scheduled loan re-
12 payments of principal or interest on a secured
13 loan under this section shall commence not
14 later than 5 years after the date of substantial
15 completion of the project (as determined by the
16 Secretary).

17 (C) DEFERRED PAYMENTS.—

18 (i) AUTHORIZATION.—If, at any time
19 after the date of substantial completion of
20 a project for which a secured loan is pro-
21 vided under this section, the project is un-
22 able to generate sufficient revenues to pay
23 the scheduled loan repayments of principal
24 and interest on the secured loan, the Sec-
25 retary subject to clause (iii), may allow the

1 entity to add unpaid principal and interest
2 to the outstanding balance of the secured
3 loan.

4 (ii) INTEREST.—Any payment de-
5 ferred under clause (i) shall—

6 (I) continue to accrue interest in
7 accordance with paragraph (2)(D)
8 until fully repaid; and

9 (II) be scheduled to be amortized
10 over the remaining term of the se-
11 cured loan.

12 (iii) CRITERIA.—

13 (I) IN GENERAL.—Any payment
14 deferral under clause (i) shall be con-
15 tingent on the project meeting such
16 criteria as the Secretary may estab-
17 lish.

18 (II) REPAYMENT STANDARDS.—
19 The criteria established under sub-
20 clause (I) shall include standards for
21 reasonable assurance of repayment.

22 (iv) PREPAYMENT.—

23 (I) USE OF EXCESS REVE-
24 NUES.—Any excess revenues that re-
25 main after satisfying scheduled debt

1 service requirements on the project
2 obligations and secured loan and all
3 deposit requirements under the terms
4 of any trust agreement, bond resolu-
5 tion, or similar agreement securing
6 project obligations may be applied an-
7 nually to prepay a secured loan under
8 this section without penalty.

9 (II) USE OF PROCEEDS OF REFI-
10 NANCING.—A secured loan under this
11 section may be prepaid at any time
12 without penalty from the proceeds of
13 refinancing from non-Federal funding
14 sources.

15 (4) SALE OF SECURED LOANS.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), as soon as practicable after the date
18 of substantial completion of a project and after
19 providing a notice to the entity, the Secretary
20 may sell to another entity or reoffer into the
21 capital markets a secured loan for a project
22 under this section, if the Secretary determines
23 that the sale or reoffering can be made on fa-
24 vorable terms.

1 (B) CONSENT OF ENTITY.—In making a
2 sale or reoffering under subparagraph (A), the
3 Secretary may not change the original terms
4 and conditions of the secured loan without the
5 written consent of the entity.

6 (5) LOAN GUARANTEES.—

7 (A) IN GENERAL.—The Secretary may
8 provide a loan guarantee to a lender in lieu of
9 making a secured loan under this section, if the
10 Secretary determines that the budgetary cost of
11 the loan guarantee is substantially the same as
12 that of a secured loan.

13 (B) TERMS.—The terms of a loan guar-
14 antee provided under this paragraph shall be
15 consistent with the terms established in this
16 section for a secured loan, except that the rate
17 on the guaranteed loan and any prepayment
18 features shall be negotiated between the entity
19 and the lender, with the consent of the Sec-
20 retary.

21 (6) LIMITATION.—No project receiving Federal
22 credit assistance under this section may be financed
23 (directly or indirectly), in whole or in part, with pro-
24 ceeds of any obligation—

1 (A) the interest on which is exempt from
2 the tax imposed under chapter 1 of the Internal
3 Revenue Code of 1986; or

4 (B) with respect to which credit is allow-
5 able under subpart I or J of part IV of sub-
6 chapter A of chapter 1 of such Code.

7 (g) PROGRAM ADMINISTRATION.—

8 (1) REQUIREMENT.—The Secretary shall estab-
9 lish a uniform system to service the Federal credit
10 instruments made available under this section.

11 (2) FEES.—The Secretary may collect and
12 spend fees, contingent on authority being provided in
13 appropriations Acts, at a level that is sufficient to
14 cover—

15 (A) the costs of expert firms retained
16 under paragraph (4); and

17 (B) all or a portion of the costs to the
18 Federal Government of servicing the Federal
19 credit instruments provided under this section.

20 (3) SERVICER.—

21 (A) IN GENERAL.—The Secretary may ap-
22 point a financial entity to assist the Secretary
23 in servicing the Federal credit instruments pro-
24 vided under this section.

1 (B) DUTIES.—A servicer appointed under
2 subparagraph (A) shall act as the agent for the
3 Secretary.

4 (C) FEE.—A servicer appointed under sub-
5 paragraph (A) shall receive a servicing fee, sub-
6 ject to approval by the Secretary.

7 (4) ASSISTANCE FROM EXPERTS.—The Sec-
8 retary may retain the services, including counsel, of
9 organizations and entities with expertise in the field
10 of project finance to assist in the underwriting and
11 servicing of Federal credit instruments provided
12 under this section.

13 (h) STATUTORY CONSTRUCTION.—Nothing in this
14 section shall be construed to—

15 (1) supersede the applicability of other require-
16 ments of Federal law (including regulations);

17 (2) relieve any recipient of financial assistance
18 under this section of any obligation to obtain any re-
19 quired State, local, or tribal permit or approval with
20 respect to the project;

21 (3) limit the right of any unit of State, local,
22 or tribal government to approve or regulate any rate
23 of return on private equity invested in the project;
24 or

1 (4) otherwise supersede any State, local, or
2 tribal law (including any regulation) applicable to
3 the construction or operation of the project.

4 (i) PREVAILING RATE OF WAGE.—

5 (1) IN GENERAL.—The Secretary shall ensure
6 that laborers and mechanics employed by contractors
7 and subcontractors on a project financed in whole or
8 in part by a Federal credit instrument made avail-
9 able under this section will be paid wages at rates
10 not less than those prevailing on similar construction
11 in the locality, as determined by the Secretary of
12 Labor under subchapter IV of chapter 31 of title 40.

13 (2) AUTHORITY OF SECRETARY OF LABOR.—
14 With respect to the labor standards specified in
15 paragraph (1), the Secretary of Labor shall have,
16 with respect to the labor standards specified in this
17 subsection, the authority and functions set forth in
18 Reorganization Plan Numbered 14 of 1950 (15 F.R.
19 3176) and section 3145 of title 40, United States
20 Code.

21 (j) REGULATIONS.—The Secretary may issue such
22 regulations as the Secretary determines appropriate to
23 carry out this section.

24 (k) USE OF AMERICAN IRON, STEEL, AND MANUFAC-
25 TURED GOODS.—

1 (1) IN GENERAL.—Except as provided by para-
2 graph (2), the Secretary shall make available a Fed-
3 eral credit instrument for a project under this sec-
4 tion only if all of the iron, steel, and manufactured
5 goods used in the project are produced in the United
6 States.

7 (2) EXCEPTION.—Upon the submission of a re-
8 quest for a waiver of the requirements under para-
9 graph (1) by an entity, the Secretary may waive
10 paragraph (1) if the Secretary finds that—

11 (A) applying paragraph (1) would be in-
12 consistent with the public interest;

13 (B) iron, steel, and the relevant manufac-
14 tured goods are not produced in the United
15 States in sufficient and reasonably available
16 quantities and of a satisfactory quality; or

17 (C) inclusion of iron, steel, and manufac-
18 tured goods produced in the United States will
19 increase the cost of the overall project by more
20 than 25 percent.

21 (3) WRITTEN WAIVER DETERMINATION AND
22 ANNUAL REPORT.—

23 (A) IN GENERAL.—If the Secretary re-
24 ceives a request for a waiver under this sub-
25 section, the Secretary shall—

1 (i) make available to the public on an
2 informal basis a copy of the request and
3 information available to the Secretary con-
4 cerning the request; and

5 (ii) allow for informal public input on
6 the request for at least 15 days prior to
7 making a finding based on the request.

8 (B) REQUIREMENT.—The Secretary shall
9 make the request and accompanying informa-
10 tion required under subparagraph (A) available
11 by electronic means, including on website of the
12 Department of Energy.

13 (4) CONSISTENT WITH OBLIGATIONS.—This
14 subsection shall be applied in a manner consistent
15 with the United States obligations under inter-
16 national agreements.

17 (l) DEFINITIONS.—In this section:

18 (1) FEDERAL CREDIT INSTRUMENT.—The term
19 “Federal credit instrument” means a secured loan
20 or loan guarantee authorized to be made available
21 under this section with respect to a project.

22 (2) QUALIFIED FACILITY.—The term “qualified
23 facility” has the meaning given the term in section
24 45Q of the Internal Revenue Code of 1986 (26
25 U.S.C. 45Q).

1 (3) INVESTMENT-GRADE RATING.—The term
2 “investment-grade rating” means a rating of BBB
3 minus, Baa3, bbb minus, BBB (low) or higher as-
4 signed by a rating agency to project obligations.

5 (4) LENDER.—

6 (A) IN GENERAL.—The term “lender”
7 means any non-Federal qualified institutional
8 buyer (as defined in section 230.144A(a) of
9 title 17, Code of Federal Regulations (or a suc-
10 cessor regulation), known as Rule 144A(a) of
11 the Securities and Exchange Commission and
12 issued under the Securities Act of 1933 (15
13 U.S.C. 77a et seq.)).

14 (B) INCLUSION.—The term “lender” in-
15 cludes—

16 (i) a qualified retirement plan (as de-
17 fined in section 4974(c) of the Internal
18 Revenue Code of 1986 (26 U.S.C.
19 4974(c))) that is a qualified institutional
20 buyer; and

21 (ii) a governmental plan (as defined in
22 section 414(d) of the Internal Revenue
23 Code of 1986 (26 U.S.C. 414(d))) that is
24 a qualified institutional buyer.

1 (5) LOAN GUARANTEE.—The term “loan guar-
2 antee” means any guarantee or other pledge by the
3 Secretary to pay all or part of the principal of, and
4 interest on, a loan or other debt obligation issued by
5 an entity and funded by a lender.

6 (6) PRODUCED IN THE UNITED STATES.—The
7 term “produced in the United States” means, in the
8 case of iron or steel, that all manufacturing proc-
9 esses, including the application of a coating, must
10 occur in the United States.

11 (7) PROJECT OBLIGATION.—

12 (A) IN GENERAL.—The term “project obli-
13 gation” means any note, bond, debenture, or
14 other debt obligation issued by an entity in con-
15 nection with the financing of a project.

16 (B) EXCLUSION.—Such term does not in-
17 clude a Federal credit instrument.

18 (8) RATING AGENCY.—The term “rating agen-
19 cy” means a credit rating agency registered with the
20 Securities and Exchange Commission as a nationally
21 recognized statistical rating organization (as defined
22 in section 3(a) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78c(a))).

24 (9) SECURED LOAN.—The term “secured loan”
25 means a direct loan or other debt obligation issued

1 by an entity and funded by the Secretary in connec-
2 tion with the financing of a project under this sec-
3 tion.

4 (10) STATE.—The term “State” means—

5 (A) a State;

6 (B) the District of Columbia;

7 (C) the Commonwealth of Puerto Rico;

8 and

9 (D) any other territory or possession of the

10 United States.

11 (11) SUBSIDY AMOUNT.—The term “subsidy
12 amount” means the amount of budget authority suf-
13 ficient to cover the estimated long-term cost to the
14 Federal Government of a Federal credit instrument,
15 as calculated on a net present value basis, excluding
16 administrative costs and any incidental effects on
17 governmental receipts or outlays in accordance with
18 the Federal Credit Reform Act of 1990 (2 U.S.C.
19 661 et seq.).

20 (12) SUBSTANTIAL COMPLETION.—The term
21 “substantial completion”, with respect to a project,
22 means the earliest date on which a project is consid-
23 ered to perform the functions for which the project
24 is designed.

25 (m) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There are authorized to be
2 appropriated—

3 (A) \$400,000,000 to carry out projects de-
4 scribed in subsection (c)(1); and

5 (B) \$100,000,000 to carry out projects de-
6 scribed in subsection (c)(2).

7 (2) AVAILABLE UNTIL EXPENDED.—Any funds
8 appropriated pursuant to paragraph (1) are author-
9 ized to remain available until expended.

10 (3) ADMINISTRATIVE COSTS.—Of the funds
11 made available to carry out this section, the Sec-
12 retary may use for the administration of this sec-
13 tion, including for the provision of technical assist-
14 ance to aid project sponsors in obtaining the nec-
15 essary approvals for the project, not more than
16 \$2,000,000 for each fiscal year.

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