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ENERGY LOAN GUARANTEE AMOUNTS

AUGUST 3, 2007.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3241]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3241) to clarify the amount of loans to be guaranteed under Title XVII of the Energy Policy Act of 2005, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3241 is to clarify the intent of Congress regarding the implementation by the Department of Energy (DOE) of Title XVII of the Energy Policy Act of 2005 (EPACT), "Incentives for Innovative Technologies", and for other purposes.

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The bill amends Title XVII to explicitly authorize the Secretary of Energy to issue a loan guarantee for an eligible project of up to 100 percent of any loan or other debt obligation, at a level sufficient to attract adequate nonguaranteed investment to capitalize an eligible project. The bill also bars the Secretary from issuing a rule or regulation establishing a lower percentage limit.

In addition, the bill stipulates that no appropriation authorized pursuant to Title XVII may exclude any category of eligible project under section 1704.

Finally, H.R. 3241 specifies that the Secretary may not issue a loan guarantee unless the borrower has provided reasonable assurances that wages paid to workers employed in any construction work financed with the loan will be in accordance with the requirements of the Davis-Bacon Act.

BACKGROUND AND NEED FOR LEGISLATION

Title XVII authorizes the Secretary of Energy to make loan guarantees for projects that (1) avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States.

Title XVII specifies 10 categories of projects that are eligible for loan guarantees, including renewable energy systems, advanced fossil technology (including certain coal gasification projects), hydrogen fuel cell technology, advanced nuclear facilities, carbon capture and sequestration, electrical, end-use technologies, fuel efficient vehicles, pollution control equipment, and refiners.

On May 24, 2007, the Department of Energy (DOE) issued a proposed rule that would limit the amount of a loan guarantee to no more than 90 percent of the amount of a debt instrument. (This proposal is subject to an existing statutory cap in Title XVII limiting the amount of a loan guarantee to eighty percent of total project cost.)

At the Subcommittee on Energy and Air Quality's April 24, 2007, hearing, several witnesses testified that if DOE adopted an arbitrary limit on the amount of debt for which a loan guarantee could be granted, some meritorious projects could be foreclosed. While the Committee recognizes that not every meritorious project will warrant funding at a level of 100 percent of the value of a debt instrument (subject to the separate statutory limit of eighty percent of the total project cost), it expects that some projects will require funding at this level. For this reason, the bill bars DOE from issuing a final rule that does not permit it to grant, on a case-by-case basis, loan guarantees of as much as 100 percent.

In addition, the bill clarifies that any appropriation made pursuant to the authority of Title XVII may not exclude any of the 10 categories of projects made eligible for a loan guarantee under section 1704 of EPACT.

HEARINGS

There was one oversight hearing and one legislative hearing held by the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, in connection with the bill reported by the Committee.

The Subcommittee on Energy and Air Quality held a hearing entitled, "Implementation of EPACT 2005 Loan Guarantee Programs by the Department of Energy," on Tuesday, April 24, 2007. The Subcommittee received testimony from the following witnesses: The Honorable Dennis R. Spurgeon, Acting Under Secretary, Department of Energy; Mr. Chris Crane, President and Chief Nuclear Officer, Exelon Generation; Ms. Julie Jorgensen, Co-President and CEO, Excelsior Energy Inc.; Mr. James C. Cosgrove, Acting Director, Natural Resources and Environment, Government Accountability Office; and Mr. Denny DeVos, Director of Corporate Finance, POET.

The Subcommittee on Energy and Air Quality held a legislative hearing on "Discussion Drafts concerning Energy Efficiency, Smart Electricity Grid, Energy Policy Act of 2005 Title XVII Loan Guarantees, and Standby Loans for Coal-to-Liquids Projects," on Thursday, May 24, 2007. The Subcommittee received testimony from the following witnesses: Mr. David Rogers, Deputy Assistant Secretary for Energy Efficiency, Department of Energy; Ms. Kateri Callahan, President, Alliance to Save Energy; Mr. Jay Birnbaum, Vice President and General Counsel, Current Group, LLC; Ms. Katharine A. Fredriksen, Principal Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Energy; Mr. Don Maley, Vice President, Leucadia International Corporation; and Dr. Daniel A. Lashof, Ph.D., Science Director, Climate Center, Natural Resources Defense Council.

SUBCOMMITTEE CONSIDERATION

Prior to the introduction of H.R. 3241, its text was considered in the Committee as a Committee Print.

On Wednesday, June 20, 2007, the Subcommittee on Energy and Air Quality met in open markup session and considered a Committee Print to clarify the amount of loans to be guaranteed under Title XVII of the Energy Policy Act of 2005. The Subcommittee favorably forwarded the Committee Print to the full Committee, amended, by a recorded vote of 17–12. The Committee Print forwarded by the Subcommittee was subsequently designated Committee Print #3 for full Committee consideration.

COMMITTEE CONSIDERATION

On Wednesday, June 27, 2007, the full Committee met in open markup session and ordered the Committee Print favorably reported to the House, as amended, by a voice vote. On July 31, 2007, a clean bill, H.R. 3241, was introduced with the approved language of the Committee Print, and was referred to the full Committee to be reported to the House without further consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. Mr. Dingell moved that the Committee favorably report the Committee Print, as amended, to the House. The motion to report the Committee Print favorably to the House was agreed to by a voice vote. There were

no recorded votes taken during full Committee consideration of the Committee Print.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee on the bill are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goals and objectives of H.R. 3241 are to clarify the amount of loans to be guaranteed under Title XVII of the Energy Policy Act of 2005, and to require that recipients of these loan guarantees provide reasonable assurances that workers will be paid prevailing wages consistent with the Davis-Bacon Act.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3241 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3241 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee will adopt as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Regarding clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate on H.R. 3241 by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available as of the time of the filing of this report by the Committee.

FEDERAL MANDATES STATEMENT

The Committee will adopt as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

Regarding section 5(b) of the Federal Advisory Committee Act, the bill does not establish any advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in the provisions of Article I, section 8, clause 1, that relate to expending funds to provide for the general welfare of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 101. Amount of loans guaranteed.—This section amends section 1702(c) of EPACT to (1) retain the existing statutory limit on DOE's authority to make a loan guarantee for an eligible project (up to 80 percent of the project cost of a facility), (2) clarify that DOE should approve an amount likely to attract nonguaranteed investment adequate to capitalize the project, (3) provide that while DOE has discretion to guarantee up to 100 percent of the loan amount (subject to the existing 80 percent of project cost cap), DOE may not issue a generic rule establishing a lower percentage limit, and (4) require that a recipient of a loan guarantee provide reasonable assurances that construction workers will be paid not less than prevailing wages consistent with the Davis-Bacon Act.

Section 102. Exclusion of categories.—Provides that no appropriation pursuant to this section may exclude any category of "eligible project" under Title XVII.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENERGY POLICY ACT OF 2005

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TITLE XVII—INCENTIVES FOR INNOVATIVE TECHNOLOGIES

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SEC. 1702. TERMS AND CONDITIONS.

(a) * * *

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[(c) AMOUNT.—Unless otherwise provided by law, a guarantee by the Secretary shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.]

(c) AMOUNT.—

(1) PERCENTAGE OF PROJECT COST.—A guarantee by the Secretary shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued, and shall be no less than the minimum amount determined by the Secretary to be likely to attract nonguaranteed investment adequate to capitalize the project.

(2) PERCENTAGE OF LOAN.—Subject to paragraph (1), the Secretary may guarantee up to 100 percent of any loan or other debt obligation of the borrower to fund an eligible project, and may not issue a rule or regulation establishing a lower percentage limit.

* * * * * * *

(k) WAGES.—No loan guarantee shall be made under this title unless the borrower has provided to the Secretary reasonable assurances that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with the loan will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the Davis-Bacon Act).

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SEC. 1704. AUTHORIZATION OF APPROPRIATIONS.

(a) * * *

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(c) EXCLUSION OF CATEGORIES.—No appropriation authorized pursuant to this section may exclude any category of eligible project described in section 1703.

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