

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 7688
OFFERED BY MR. BARR OF KENTUCKY**

Add at the end the following:

1 **SEC. 9. ENERGY DE-RISKING COMPENSATION PROGRAM.**

2 (a) IN GENERAL.—The Defense Production Act of
3 1950 (50 U.S.C. 4531 et seq.) is amended by adding at
4 the end the following:

5 **“TITLE V—MISCELLANEOUS.**

6 **“SEC. 501. ENERGY DE-RISKING COMPENSATION PROGRAM.**

7 “(a) IN GENERAL.—The Secretary of Energy shall,
8 not later than 1 year after the date of the enactment of
9 this section, establish an energy security de-risking pro-
10 gram (in this section referred to as the ‘program’) to pro-
11 vide compensation to sponsors of certain electric gener-
12 ating facilities if a qualifying Federal action materially im-
13 pairs or prohibits the operation of such electric generating
14 facility causing an average reduction of 10 percent or
15 greater in generation output or dispatch capability for a
16 continuous period of not less than 180 days.

17 “(b) APPLICATION AND ENROLLMENT.—

18 “(1) IN GENERAL.—To be eligible to participate
19 in the program, a sponsor of a electric generating

1 facility shall submit an application to the Secretary
2 at such time and in such manner as the Secretary
3 may reasonably require.

4 “(2) DETERMINATION OF ELIGIBILITY.—The
5 Independent Program Administrator procured under
6 subsection (h) shall, not later than 90 days after the
7 date on which the Secretary receives an application
8 under subsection (b), shall determine whether the
9 sponsor who submitted such application under para-
10 graph (1) has—

11 “(A) made investments in an operational
12 electric generating facility of not less than
13 \$100,000,000, as determined by the Inde-
14 pendent Program Administrator using informa-
15 tion provided by the sponsor in an application
16 under paragraph (1), including verifiable ex-
17 penditures attributable to the development, con-
18 struction, modernization, major refurbishment,
19 or life-extension investments in such facility; or

20 “(B) made or intends to make investments
21 to develop a electric generating facility for
22 which all approvals and permits required under
23 Federal law have been granted as of the date
24 of the application submitted under paragraph
25 (1), as determined by the Secretary.

1 “(3) ENROLLMENT.—

2 “(A) IN GENERAL.—The Secretary shall
3 enroll in the program on January 1st of the
4 soonest upcoming calendar year any sponsor
5 who the Independent Program Administrator
6 determines has—

7 “(i) made investments in an oper-
8 ational electric generating facility of not
9 less than \$100,000,000, as determined by
10 the Independent Program Administrator
11 using information provided by the sponsor
12 in an application under paragraph (1), in-
13 cluding verifiable expenditures attributable
14 to the development, construction, mod-
15 ernization, major refurbishment, or life-ex-
16 tension investments in such facility; or

17 “(ii) made or intends to make invest-
18 ments to develop a electric generating fa-
19 cility for which all approvals and permits
20 required under Federal law have been
21 granted as of the date of the application
22 submitted under paragraph (1), as deter-
23 mined by the Secretary.

24 “(B) EXCEPTION.—The Secretary may not
25 enroll any sponsor if the Secretary determines

1 that the Independent Program Administrator
2 procured under subsection (h) has a material fi-
3 nancial interest in the electric generating facil-
4 ity the sponsor is seeking to enroll in the pro-
5 gram.

6 “(c) FEES AND PREMIUMS.—

7 “(1) ENROLLMENT FEE.—Each sponsor en-
8 rolled in the program by the Secretary under sub-
9 section (b) shall, upon enrollment, be required by the
10 Secretary to pay an enrollment fee equal to the less-
11 er of—

12 “(A) the enrollment fee established by the
13 independent program administrator under para-
14 graph (3) for the calendar year in which the
15 sponsor enrolls in the program; or

16 “(B) the amount equal to 5 percent of—

17 “(i) in the case of a electric gener-
18 ating facility that is being developed, the
19 projected capital expenditures to be made
20 by the sponsor to complete the construc-
21 tion of the new facility, including verifiable
22 development, construction, permitting, and
23 financing costs, as determined by the Sec-
24 retary using information provided by the

1 sponsor in an application under subsection
2 (b); or

3 “(ii) in the case of an operational
4 electric generating facility, the total, docu-
5 mented capital expenditures made by the
6 sponsor attributable to the development,
7 construction, modernization, major refur-
8 bishment, or life-extension investments in
9 such facility, as determined by the Sec-
10 retary using information provided by the
11 sponsor in an application under subsection
12 (b).

13 “(2) ANNUAL PREMIUM.—Each sponsor en-
14 rolled in the program by the Secretary under sub-
15 section (b) shall, each year beginning one year after
16 the sponsor is enrolled in the program be required
17 by the Secretary to pay an annual premium equal to
18 the lesser of—

19 “(A) the annual premium established by
20 the independent program administrator under
21 paragraph (3) for the calendar year in which
22 the sponsor enrolls in the program; or

23 “(B) the amount equal to 2 percent of—

24 “(i) in the case of a electric gener-
25 ating facility that is being developed, the

1 projected capital expenditures to be made
2 by the sponsor to complete the construc-
3 tion of the new facility, including verifiable
4 development, construction, permitting, and
5 financing costs, as determined by the Sec-
6 retary using information provided by the
7 sponsor in an application under subsection
8 (b); or

9 “(ii) in the case of an operational e,
10 the total, documented capital expenditures
11 made by the sponsor attributable to the de-
12 velopment, construction, modernization,
13 major refurbishment, or life-extension in-
14 vestments in such facility, as determined
15 by the Secretary using information pro-
16 vided by the sponsor in an application
17 under subsection (b).

18 “(3) FEE AND PREMIUM RATES.—

19 “(A) IN GENERAL.—Not later than Janu-
20 ary 1 of each calendar year, the Independent
21 Program Administrator procured by the Sec-
22 retary under subsection (j) shall establish, in
23 accordance with rules issued by the Secretary,
24 enrollment fee and annual premium rates appli-
25 cable for such calendar year based on the pro-

1 jected solvency needs of the Energy Security
2 Trust Fund.

3 “(B) PROHIBITION ON RISK ADJUST-
4 MENT.—When establishing enrollment fee and
5 annual premium rates the Independent Pro-
6 gram Administrator may not vary rates based
7 on risk.

8 “(d) FEDERAL CONTRIBUTION TO ENERGY SECU-
9 RITY TRUST FUND.—The Secretary shall, each fiscal year,
10 transfer available amounts appropriated for activities
11 under sections 201, 202, 203, 204, 205, and 206 of the
12 Defense Production Act of 1950 that are held in the De-
13 fense Production Act Fund to the Energy Security Fund
14 established under subsection (e) in an amount equal to
15 the sum of all annual premiums collected by the Secretary
16 under subsection (e) in such fiscal year.

17 “(e) ENERGY SECURITY TRUST FUND.—

18 “(1) ESTABLISHMENT.—There is established in
19 the Treasury a revolving fund to be known as the
20 ‘Energy Security Trust Fund’ (in this section re-
21 ferred to as the ‘Fund’).

22 “(2) DEPOSITS.—The Fund shall consist of—

23 “(A) enrollment fees collected under sub-
24 section (c);

1 “(B) annual premiums collected under sub-
2 section (c);

3 “(C) Federal contributions transferred
4 under subsection (d); and

5 “(D) interest earned on the investment of
6 the amounts in the Fund.

7 “(3) INVESTMENT OF FUND AMOUNTS.—The
8 Secretary shall invest the amounts in the fund in ob-
9 ligations of the United States in accordance with
10 section 9702 of title 31, United States Code.

11 “(4) USE OF FUNDS.—Amounts in the Fund
12 shall be available to the Secretary of Energy, with-
13 out further appropriation—

14 “(A) to provide compensation under this
15 section; and

16 “(B) to administer the program, except
17 that not more than 3 percent of the amount de-
18 posited in the Fund in a fiscal year may be
19 used for administrative expenses in such fiscal
20 year.

21 “(5) TRANSFER OF EXCESS AMOUNTS.—

22 “(A) IN GENERAL.—If, at the end of any
23 fiscal year, the unobligated balance of the Fund
24 exceeds 1000 percent of the sum of the enroll-
25 ment fees annual premiums collected under sub-

1 section (c) during such fiscal year, the Sec-
2 retary shall transfer to the general fund of the
3 Treasury for use for activities under sections
4 201, 202, 203, 204, 205, and 206 of the De-
5 fense Production Act, an amount equal to the
6 excess.

7 “(B) BACKSTOP AUTHORITY.—If, at any
8 time, the amounts available in the Fund are in-
9 sufficient to satisfy compensation obligations
10 under subsection (g), the Secretary may use
11 amounts appropriated for activities under sec-
12 tions 201, 202, 203, 204, 205, and 206 of the
13 Defense Production Act of 1950.

14 “(f) 5 YEAR PARTICIPATION REQUIREMENT.—

15 “(1) IN GENERAL.—Any sponsor who is en-
16 rolled in the program by the Secretary under sub-
17 section (b) shall be required to commit to partici-
18 pating in the program for not less than 5 years.

19 “(2) EARLY WITHDRAWAL.—

20 “(A) IN GENERAL.—A sponsor withdraw
21 from the program during the 5-year period fol-
22 lowing the enrollment of the sponsor in the pro-
23 gram only if—

1 “(i) the sponsor provides written no-
2 tice to the Secretary stating the sponsor’s
3 intent to withdraw from the program; and

4 “(ii) pays to the Secretary an amount
5 equal to enrollment fee paid by the sponsor
6 under subsection (c) multiplied by 3.

7 “(3) COOLING-OFF PERIOD.—A sponsor that
8 withdraws early from the Program under paragraph
9 (2), and any sponsor or successor-in-interest to such
10 sponsor with respect to the same covered facility,
11 shall be ineligible to enroll in the Program for a pe-
12 riod of 3 years beginning on the date the sponsor
13 withdrew from the program under paragraph (2).

14 “(4) EFFECT OF WITHDRAWAL.—If a sponsor
15 withdraws early from the Program under paragraph
16 (2), the sponsor shall not longer be eligible for com-
17 pensation with respect to any qualifying Federal ac-
18 tion that occurs on or after the date of withdrawal
19 with respect to the sponsor’s electric generating fa-
20 cility.

21 “(g) COMPENSATION.—

22 “(1) IN GENERAL.—If a qualifying Federal ac-
23 tion causes a reduction of 10 percent or greater in
24 generation output or dispatch capability of a electric
25 generating facility of a sponsor enrolled in the pro-

1 gram for a continuous period of not less than 180
2 days, as determined by the independent program ad-
3 ministrator, the Secretary shall provide compensa-
4 tion to such sponsor.

5 “(2) CAUSATION DETERMINATION.—The inde-
6 pendent program administrator procured by the Sec-
7 retary under subsection (j) shall determine whether
8 a qualifying Federal action caused 10 percent or
9 more of a reduction in generation output or dispatch
10 capability experienced by a electric generating facil-
11 ity by evaluating whether market conditions, fuel
12 price changes, maintenance decisions, equipment
13 failure, State or local actions, or other independent
14 economic factors may have impaired or prohibited
15 the operation or been significant factors in the im-
16 pairment or prohibition of operations.

17 “(3) REQUIREMENTS FOR COMPENSATION.—

18 “(A) COMPLIANCE WITH FEDERAL RE-
19 QUIREMENTS.—To be eligible to receive com-
20 pensation under this subsection, the electric
21 generating facility of a sponsor enrolled in the
22 program shall be in compliance with all Federal
23 requirements during the period in which the
24 qualifying Federal action materially impaired or
25 prohibited the operation of such facility, the

1 Secretary shall provide compensation in accord-
2 ance with this subsection.

3 “(B) OWNERSHIP, OPERATIONAL, OR CON-
4 TROLLING INTEREST.—A sponsor may only re-
5 ceive compensation under this subsection if the
6 sponsor has a direct ownership, operational, or
7 controlling interest in the electric generating fa-
8 cility the sponsor enrolled in the program at the
9 time of a qualifying Federal action and for the
10 duration of the generation output or dispatch
11 capability caused by such action.

12 “(4) AMOUNT OF COMPENSATION.—

13 “(A) IN GENERAL.—The amount of any
14 compensation to be provided to a sponsor under
15 this subsection shall be an amount equal to 80
16 percent of the amount of revenue lost by the
17 electric generating facility of the sponsor due to
18 reduced generation output or dispatch capa-
19 bility experienced as a result of a qualifying
20 Federal action, as determined by the inde-
21 pendent program administrator.

22 “(B) EXCEPTION.—The amount of com-
23 pensation to be provided to a sponsor under
24 subparagraph (A) may not exceed 5 times the
25 sum of the enrollment fee paid by the sponsor

1 and the annual premiums that the sponsor has
2 paid.

3 “(5) PAYMENT.—The independent program ad-
4 ministrator shall calculate compensable losses under
5 this subsection and certify such amounts to the Sec-
6 retary who shall disburse payments to the sponsor
7 whom compensation is owed.

8 “(h) SELECTION OF INDEPENDENT PROGRAM AD-
9 MINISTRATOR.—

10 “(1) IN GENERAL.—The Secretary shall,
11 through full and open competition, competitively
12 procure an entity to serve as the Independent Pro-
13 gram Administrator that—

14 “(A) offers insurance or reinsurance;

15 “(B) is licensed to offer insurance or rein-
16 surance in at least one State and in is good
17 standing in such State;

18 “(C) has demonstrated experience in un-
19 derwriting, actuarial modeling, claims adminis-
20 tration, and loss adjudication for complex com-
21 mercial risks or infrastructure risks; and

22 “(D) satisfy any financial solvency stand-
23 ards the Secretary determines appropriate to
24 require.

1 “(2) DUTIES.—The Independent Program Ad-
2 ministrators procured by the Secretary under this
3 subsection shall—

4 “(A) determine the rates of enrollment fees
5 and annual premiums;

6 “(B) conduct revenue audits and oper-
7 ational audits electric generating facilities en-
8 rolled in the program by a sponsor as necessary
9 to evaluate claims for compensation under sub-
10 section (g);

11 “(C) determine whether a qualifying Fed-
12 eral action caused a reduction of 10 percent or
13 greater in generation output or dispatch capa-
14 bility of a electric generating facility of a spon-
15 sor enrolled in the program for a continuous pe-
16 riod of not less than 180 days;

17 “(D) calculate compensable losses under
18 subsection (g) and certify such amounts to the
19 Secretary; and

20 “(E) conduct periodic solvency assessments
21 of the Fund in accordance with standards es-
22 tablished by the Secretary by regulation.

23 “(3) RECORD ACCESS AND OVERSIGHT.—The
24 Independent Program Administrator shall maintain
25 complete records of all data, analyses, methodolo-

1 gies, and determinations conducted under this sec-
2 tion and shall make such records available to the
3 Secretary upon request.

4 “(4) OVERSIGHT.—

5 “(A) IN GENERAL.—The Secretary shall
6 have full access to any information relied upon
7 by the Independent Program Administrator in
8 establishing enrollment fees, annual premiums,
9 solvency assessments, or compensation deter-
10 minations.

11 “(B) PROPRIETARY INFORMATION.—Any
12 proprietary or confidential business information
13 obtained under this paragraph shall be pro-
14 tected from public disclosure in accordance with
15 applicable law.

16 “(5) INDEPENDENCE.—In carrying out the du-
17 ties described in paragraph (2), the Independent
18 Program Administrator shall act independently and
19 may not be directed or influenced by the Secretary
20 or any other Federal officer with respect to indi-
21 vidual claim determinations.

22 “(6) BINDING DETERMINATION.—A determina-
23 tion of the Independent Program Administrator
24 under this section shall be binding on the Secretary

1 and may not be revised except in cases of fraud, ma-
2 terial misrepresentation, or manifest error.

3 “(7) JUDICIAL REVIEW.—Any final determina-
4 tion under this subsection shall constitute final
5 agency action for purposes of chapter 7 of title 5,
6 United States Code.

7 “(i) DEFINITIONS.—In this section:

8 “(1) ELECTRIC GENERATING FACILITY.—The
9 term ‘electric generating facility’ means a facility lo-
10 cated in the United States that is used for the gen-
11 eration of electric energy.

12 “(2) QUALIFYING FEDERAL ACTION.—The term
13 ‘qualifying Federal action’ means—

14 “(A) the enactment of a Federal statute
15 after the date of enrollment of a sponsor in the
16 program that—

17 “(i) imposes a new or more restrictive
18 legal obligations or operational limitations
19 not in effect at the time of enrollment; and

20 “(ii) directly results in generation out-
21 put or dispatch capability reduction for an
22 electric generating facility.

23 “(B) the issuance of a final agency rule,
24 order or permit condition that constitutes final

1 agency action within the meaning of section
2 704 of title 5, United States Code and—

3 “(i) imposes a new or more restrictive
4 legal obligations or operational limitations
5 not in effect at the time of enrollment; and

6 “(ii) directly results in generation out-
7 put or dispatch capability reduction for an
8 electric generating facility.

9 “(3) SECRETARY.—The term ‘Secretary’ means
10 the Secretary of Energy.

11 “(4) SPONSOR.—The term ‘sponsor’ means an
12 entity incorporated and headquartered in the United
13 States with an ownership or development interest in
14 a covered facility.”.

15 (b) RULEMAKING.—The Secretary of Energy shall,
16 not later than 1 year after the date of the enactment of
17 this section, issue a final rule that establishes—

18 (1) the form, required contents, and docu-
19 mentation requirements for applications under this
20 subsection, including specific evidentiary standards
21 that will be used by the Secretary to determine if a
22 electric generating facility meets the criteria de-
23 scribed in section 501(b)(2) of the Defense Produc-
24 tion Act of 1950;

1 (2) standards and methodologies for the inde-
2 pendent program administrator to use to establish
3 enrollment fees and annual premiums under section
4 501(e)(3) of the Defense Production Act of 1950;

5 (3) standards for the independent program ad-
6 ministrator to use to conduct periodic solvency as-
7 sessments of the Energy Security Trust Fund under
8 501(h)(2) of the Defense Production Act of 1950;

9 (4) a process through which sponsors enrolled
10 in the program may submit requests for compensa-
11 tion under 501(g) of the Defense Production Act of
12 1950;

13 (5) a process through which requests for com-
14 pensation under section 501(g) of the Defense Pro-
15 duction Act of 1950 shall be adjudicated, including
16 required documentation, and evidentiary standards
17 applicable to such requests;

18 (6) a process for re-enrollment of sponsors after
19 5 years with no enrollment fee under section 501 of
20 the Defense Production Act of 1950;

21 (7) a process for sponsors to withdraw from the
22 program under section 501 of the Defense Produc-
23 tion Act of 1950 without paying any fee in the pe-
24 riod 6 months before the end of the 5 year period
25 in which the sponsor enrolled; and

1 (8) timelines for, with respect to the program
2 under section 501 of the Defense Production Act of
3 1950—

4 (A) when the independent program admin-
5 istrator shall publish enrollment fees and pre-
6 miums;

7 (B) when then Secretary will be accepting
8 applications under subsection 501(b) of the De-
9 fense Production Act of 1950;

10 (C) when the independent program admin-
11 istrator shall complete eligibility determinations;

12 (D) when the Secretary of Energy shall
13 complete enrollments after such eligibility deter-
14 minations are completed; and

15 (E) when the Secretary of Energy shall
16 send enrollment fee invoices to sponsors.

17 (c) CONFORMING AMENDMENT.—The table of con-
18 tents for the Defense Production Act of 1950, as amended
19 by this Act, is further amended by adding at the end the
20 following:

“TITLE V. MISCELLANEOUS.”.



