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ENERGIZE AFRICA ACT OF 2014

JULY 24, 2014.—Ordered to be printed

Mr. MENENDEZ, from the Committee on Foreign Relations, submitted the following

R E P O R T

[To accompany S. 2508]

The Committee on Foreign Relations, having had under consideration the bill (S. 2508) to establish a comprehensive United States Government policy to assist countries in sub-Saharan Africa to improve access to and the affordability, reliability, and sustainability of power, and for other purposes, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

CONTENTS

I. PURPOSE

The purpose of S. 2508 is to establish a comprehensive United States government policy to develop and coordinate strategies and reforms that improve access to, and the affordability, reliability, and sustainability of, power for residents of sub-Saharan Africa. The bill also extends the issuing authority of the Overseas Private Investment Corporation through 2019 and grants it limited additional authority for certain pilot projects focused on promoting private sector electricity investments in sub-Saharan Africa. S. 2508 further requires a progress report evaluating the effectiveness of policies and investments made by the U.S. in expanding electricity access in sub-Saharan Africa.

II. COMMITTEE ACTION

S. 2508 was introduced on June 19, 2014, by Senator Menendez and co-sponsored by Senators Corker, Coons, Isakson, Markey, and

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Johanns. On June 24, 2014, the committee considered S. 2508 and reported it favorably, with amendments.

The committee took the following action with regard to amendments:

A manager's package of amendments passed by voice vote. Among other things, the manager's amendment added language authorizing the establishment of an interagency working group to coordinate the activities of the executive branch agencies in carrying out the required strategy; added language addressing prioritization of assistance for power projects in sub-Saharan Africa by the Millennium Challenge Corporation; and added language to the Statement of Policy section regarding promotion of an all-of-the-above energy development strategy for sub-Saharan Africa.

An amendment offered by Senator Flake to repeal the third proviso of Section 7079(b) of the Consolidated Appropriations Act, 2010, was defeated by voice vote.

An amendment offered by Senator Barrasso to strike Title II of the bill failed by a roll call vote of 5-11, with Senators Risch, Rubio, Johnson, Flake, and Barrasso voting in favor and Senators Menendez, Boxer, Cardin, Shaheen, Durbin, Coons, Udall, Kaine, Murphy, Markey, and Corker opposed. Senators McCain and Paul did not vote.

III. Background

Chairman Menendez and Ranking Member Corker introduced S. 2508 to address the lack of electricity faced by nearly 70 percent of sub-Saharan Africa's population. The legislation addresses solutions to the lack of overall access, lack of access to affordable electricity options, and an inability to ensure sustainable and reliable power. It establishes goals of providing access to 50,000,000 sub-Saharan Africans by 2020 and adding 20,000 megawatts of electricity by 2020. With increased access to electricity, sub-Saharan Africans can turn away from unsustainable and unhealthy fuel sources such as kerosene, wood, and charcoal. The bill supports financing, regulatory reform, and policy advocacy that will significantly increase the continent's access to electricity in a responsible and financially sustainable way and open new doors to private sector investment, increased public health, and economic growth.

On June 30, 2013, President Obama announced his "Power Africa Initiative" to address these problems and double the number of Africans with access to electricity. Power Africa focuses on leveraging private investment to increase financing for power projects in sub-Saharan Africa.

On May 8, 2014, the House of Representatives passed H.R. 2548, the Electrify Africa Act of 2014, which seeks to establish a comprehensive United States government policy to develop an appropriate mix of power solutions, including renewable energy, for more broadly distributed electricity access.

S. 2508 provides a framework for a coordinated strategy for the United States to work with sub-Saharan Africa in order to improve access to electricity. It establishes the goals of providing access to 50,000,000 sub-Saharan Africans by 2020, and adding 20, 000 megawatts of electricity by 2020.

The bill encourages the Overseas Private Investment Corporation (OPIC), the United States Agency for International Development

(USAID), the U.S. Department of Treasury, the World Bank, the African Development Bank, and the U.S. Trade and Development Agency to prioritize, as appropriate, loans, assistance, and technical support that promote private investment in projects that increase electricity access and reliability. The bill also encourages these agencies to partner with sub-Saharan African governments to develop policies that reduce burdensome regulations that hinder private investment in the electricity sector. To achieve broader energy access for those currently living beyond the reaches of the existing electricity infrastructure, S. 2508 places an increased emphasis on the promotion and development of off-grid and distributed technologies to be used at a local level.

S. 2508 also reauthorizes the Overseas Private Investment Corporation (OPIC) through 2019, and grants it limited additional authority for certain pilot projects focused on promoting private sector electricity investments in sub-Saharan Africa. This legislation also creates a new Inspector General to oversee OPIC, which currently does not have its own Inspector General.

The bill also requires a report to the committee in three years outlining the strategies, investments, and policy changes being made under the legislation. This report would detail the electricity access programs U.S. government support and private investment are going towards, accompanied with empirical results indicating the yielded results of investments in terms of increased electricity access and reliability.

S. 2508 recognizes that improving electricity access in Africa will require a broad mix of fuel sources, many of which exist in Africa in abundance. S. 2508 therefore takes a fuel neutral, all-of-the-above approach. As called for in the policy section of the bill, Energize Africa anticipates energy access being addressed in sub-Saharan Africa using renewable and non-renewable fuels. These fuels include solar, wind, natural gas, and coal.

The bill also places strong emphasis on the development of economically sound utilities. To ensure appropriate cost-recovery by electricity transmission and distribution operators, an appropriate policy and legal framework must be in place. For this reason, the bill focuses not only on facilitating private sector development of electricity generation, the bill also requires implementing industry best practices with respect to transmission and distribution such as commercial cost recovery practices, regulatory reforms to improve efficiencies, strengthening independent regulators, and implementing smart grid technologies. The goal is to ensure that national electric grids, developed with U.S. assistance, will remain financially sustainable over the long term.

The legislation also aims to improve access to electricity for communities who, because of existing constraints and obstacles, are not or will not be linked to national and regional grids in the near term. The bill calls for off-grid and mini-grid technologies to be employed as an alternative strategy to provide communities with electricity in an economical way.

IV. Discussion

A summary of the key provisions of S. 2508, as amended, follows:

Section 101

Section 101 states that the purpose of S. 2508 is to encourage the efforts of countries in sub-Saharan Africa to improve access to affordable and reliable power.

Section 102

Section 102 declares that it is the policy of the United States, in coordination with international financial institutions, sub-Saharan African governments and the private sector, to:

(1) promote first-time access to power and power services in sub-Saharan Africa for at least 50,000,000 people by 2020, in both urban and rural areas;

(2) encourage the installation of at least 20,000 additional megawatts of electrical power in sub-Saharan Africa by 2020 through a broad mix of energy options that will reduce poverty, promote sustainable development, and drive economic growth;

(3) promote reliable, affordable, and sustainable power in urban areas in order to promote economic growth and job creation;

(4) promote efficient institutional platforms and financing for the provision of electrical service to rural and underserved populations;

(5) encourage the necessary in-country reforms that will make possible the expansion of power access;

(6) promote reforms of power production, delivery, and pricing, as well as regulatory reforms and transparency, in order to support long-term, market-based power generation and distribution;

(7) promote policies to displace kerosene lighting with safer, cleaner technologies; and

(8) promote an all-of-the-above energy development strategy for sub-Saharan Africa.

Section 103

Section 103 establishes a multiyear strategy that requires the President to establish and submit to Congress, within 180 days, a comprehensive multiyear strategy to encourage the efforts of countries in sub-Saharan Africa in implementing national power strategies and developing an appropriate mix of power solutions. The strategy must address ways to attract private investment in the power sector, both on and off the grid, assess the financial viability of power utilities, and be sufficiently flexible to allow for technological innovation in the power sector. Section 103 further states the President may establish, as appropriate, an Interagency Working Group to coordinate executive branch agencies involved in the implementation of the strategy. The Interagency Working Group would also facilitate partnerships between executive agencies, the private sector, and other development agencies to ensure effective implementation. Section 103 also establishes an African Power Advisory Group, which will be formed to advise the President on how to develop and implement the strategy. The group shall be composed of up to 13 members appointed by the President, including the Coordinator of the President's Power Africa Initiative, 7 individuals from the power sector, 3 individuals with experience in working with the African business community, or with African governments, one individual with experience in utility regulation, and the official designated pursuant to the National Defense Authorization Act for Fiscal Year 2014 to coordinate efforts to increase United States exports to Africa.

Section 104

Section 104 expresses the sense of Congress that, as the United States deepens its engagement with countries in sub-Saharan Africa pursuant to this Act, priority should be given to countries with a demonstrated commitment to reforms that will attract private investment in the electric sector, in making prioritization determinations, the United States should also consider business opportunities for the U.S. private sector, the potential for fostering regional trade of electricity, opportunities to collaborate with international partners, and the availability of resources.

Section 105

Section 105 directs the Administrator of the United States Agency for International Development to, as appropriate, prioritize assistance and loan guarantees to local financial institutions in sub-Saharan Africa and to establish metric-based targets to measure their effectiveness.

Section 106

Section 106 requires the Director of the Trade and Development Agency to, as appropriate, prioritize the promotion of United States private sector participation in energy sector development projects and funding of project preparation activities in sub-Saharan Africa.

Section 107

Section 107 directs the Overseas Private Investment Corporation OPIC to, as appropriate, prioritize investments in the electricity sector infrastructure in sub-Saharan Africa, including renewable energy projects, intended to maximize the number of people with new access to power, improve energy access infrastructure, provide reliable power, reduce transmission and distribution losses, improve efficiency, and reduce impediments to business productivity and investment. The section also directs OPIC to implement streamlined procedures to facilitate these investments. The section also requires OPIC to expedite review of applications, encourage small- and medium-sized enterprises and cooperative service providers to participate in energy investment activities, and publish information on the effects its energy investments have had on economic development.

Section 108

Section 108 directs the United States Executive Directors at the World Bank Group and the African Development Bank to use the voice, vote, and influence of the U.S. to encourage those institutions to prioritize increasing their investment in sub-Saharan electrification projects; provide technical assistance to regulatory authorities to, among other things, remove barriers to commercially viable projects, to modify regulatory and legal regimes to reduce certain losses, implement cost-based tariffs and provide for commercial cost recovery, reduce corruption and improve transparency, and implement reforms that facilitate efficient power generation, transmission and distribution, as well as off-grid energy markets; use clear, accountable, and metric-based targets to measure effectiveness; and support ongoing efforts to foster grown in the off-grid lighting and power markets.

Section 109

Section 109 states that the African Development Foundation should seek opportunities to make grants and provide technical support to businesses and organizations in sub-Saharan Africa that qualify and are developing on- and off-grid solutions to meet the power needs of rural communities underserved by national grids.

Section 110

Section 110 states that the Chief Executive Officer and the Board of Directors of the Millennium Challenge Corporation should assess, as appropriate, the extent to which insufficient access to and reliability of electricity is a binding constraint on sustainable economic growth in sub-Saharan Africa; and, as appropriate, prioritize, among other things, the provision of assistance and engagement with governments in support of private and public sector efforts to reform regulatory framework and increase access to electricity, both on- and off-grid.

Section 111

Section 111 requires a 3-year evaluation of progress made towards achieving the policy goals of section 103. The report reviews policies advocated by the United States that promote increased energy access and electricity sector reform. The report also identifies the number and type of projects receiving United States government support, the total costs of the project, the amount of U.S. supported investment, and empirical results of the project in terms of increased electricity to businesses, communities, and individuals.

Section 201

Section 201 extends OPIC's issuing authority through 2019.

Section 202

Section 202 directs OPIC to develop, within 180 days of enactment of this Act, policies to simplify and streamline the process for reviewing and considering of investments, among other things, in sub-Saharan Africa under $20 million in order to promote increased investment and reduce administrative costs.

Section 203

Section 203 establishes an advisory board to provide OPIC with guidance on investing in power projects in Africa.

Section 204

Section 204 creates a five year pilot program that would permit OPIC to assist, with specific limitations on the size of the assistance, joint ventures or partnerships that are owned, in a controlling share, by U.S. citizens for power projects in sub-Saharan Africa.

Section 205

Section 205 creates a five year pilot project to allow OPIC to invest in power projects by eligible investors in sub-Saharan Africa where the Corporation's total support does not exceed $50,000,000. The section also creates a five year pilot program to allow OPIC to provide currency guaranties for a local branch of a foreign bank, if the project is sponsored by an eligible investor and is a power project in sub-Saharan Africa.

Section 206

Section 206 allows OPIC to extend the term of obligation for renewable energy projects from 20 years to 30 years for power projects in sub-Saharan Africa.

Section 207

Section 207 addresses the role of Inspector General for OPIC. Currently, OPIC does not have its own inspector general and the USAID inspector general oversees OPIC. This provision would create a separate Inspector General for OPIC.

Section 208

Section 208 directs OPIC to undertake an annual customer survey to determine how well it is meeting the needs of its customer base, consistent with U.S. foreign policy interests.

Section 209

Section 209 provides authority for OPIC to hire not more than 20 additional temporary employees, on a limited-appointment basis under existing federal government authorities, specifically for sub-Saharan Africa power related work.

Section 210

Section 210 establishes the sense of Congress that appropriations should be made to address the administrative expenses necessary for OPIC should for the enactment of the Energize Africa Act through the year 2019.

Section 211

Section 211 requires OPIC to submit a report within 180 days on the effectiveness of its existing authorities for energy and infrastructure projects and whether further authorities, such as the ability for OPIC to invest directly in projects, might be appropriate or effective.

V. Cost Estimate

In accordance with XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee notes that the cost estimate provided by the Congressional Budget Office was not available for inclusion in this report. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

VI. Evaluation of Regulatory Impact

Pursuant to the requirement of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee has considered the regulatory and paperwork impact of S. 2508, as amended, and decided that such impact would be minimal. Section 208 directs OPIC to conduct a survey of a sample of its customers to assess the satisfaction of those customers with the operation and procedures of OPIC, with particular attention to small businesses and cooperatives. Because the survey would be voluntary, and would be conducted only with a sample of customers, it is the committee's judgment that the regulatory and paperwork impact of this provision would be minimal.

VII. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 of the Standing Rules of the Senate, 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).

FOREIGN ASSISTANCE ACT OF 1961

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SEC. 233. ORGANIZATION AND MANAGEMENT. (a) * * *

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[(e) INVESTMENT ADVISORY COUNCIL.—The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa, including through the use of an investment advisory council to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the investment advisory council shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The investment advisory council shall terminate 4 years after the date of the enactment of this subsection.]

(e) ACTIVITIES IN SUB-SAHARAN AFRICA; INVESTMENT ADVISORY COUNCIL.—

(1) IN GENERAL.—The Board should take prompt measures to prioritize, as appropriate, the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa in the areas of power generation, distribution, and off-grid power and lighting, including through the use of an investment advisory council to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa.

(2) RECOMMENDATIONS.—The investment advisory council described in paragraph (1) shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for private sector trade and investment with and in sub-Saharan Africa.

(3) TERMINATION.—The investment advisory council described in paragraph (1) shall terminate on December 31, 2018.

(4) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The investment advisory council described in paragraph (1)

shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

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SEC. 235. ISSUING AUTHORITY, DIRECT INVESTMENT AUTHORITY AND RESERVES.—

(a) ISSUING AUTHORITY.—

(1) INSURANCE AND FINANCING.—(A) The maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a), and the amount of financing issued under sections 234(b) and (c), shall not exceed in the aggregate $29,000,000,000.

(B) Subject to spending authority provided in appropriations Acts pursuant to section 504(b) of the Federal Credit Reform Act of 1990, the Corporation is authorized to transfer such sums as are necessary from its noncredit activities to pay for the subsidy and administrative costs of the investment guaranties and direct loan programs under subsections (b) and (c) of section 234.

(2) TERMINATION OF AUTHORITY.—The authority of subsections (a), (b), and (c) of section 234 shall continue until ❲2007❳ *2019*.

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SEC. 237. GENERAL PROVISIONS RELATING TO INSURANCE GUARANTY, AND FINANCING PROGRAM.—(a) * * *

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❲(e) No insurance, guaranty, or reinsurance of any equity investment shall extend beyond twenty years from the date of issuance.❳

(e) MAXIMUM TERM OF OBLIGATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), no insurance, guaranty, or reinsurance of any equity investment shall extend beyond 20 years after the date of issuance.

(2) EXTENDED TERM OF OBLIGATION FOR CERTAIN PROJECTS.—An insurance, guaranty, or reinsurance of an equity investment in a renewable energy project in sub-Saharan Africa may extend up to 30 years after the date of issuance.

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SEC. 239. GENERAL PROVISIONS AND POWERS.—(a) * * *

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❲(e) The Inspector General of the Agency for International Development (1) may conduct reviews, investigations, and inspections of all phases of the Corporation's operations and activities and (2) shall conduct all security activities of the Corporation relating to personnel and the control of classified material. With respect to his responsibilities under this subsection, the Inspector General shall report to the Board. The agency primarily responsible for administering part I shall be reimbursed by the Corporation for all expenses incurred by the Inspector General in connection with his responsibilities under this subsection.❳

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(l) ASSESSMENT OF CUSTOMER SATISFACTION.—

(1) IN GENERAL.—Each fiscal year, the Corporation shall conduct a survey of a sample of its customers to assess the satisfac-

tion of those customers with the operation and procedures of the Corporation, with particular attention to customers of the Corporation that are small businesses and cooperatives.

(2) REPORT TO CONGRESS.—The Corporation shall include in its annual report required under section 240A a report on the survey conducted under paragraph (1) that includes, as appropriate, summaries of recommendations made by customers of the Corporation with respect to ways to improve the operations and procedures of the Corporation.

INSPECTOR GENERAL ACT OF 1978

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SECTION 8G. REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

(a) Notwithstanding section 12 of this Act, as used in this section—

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(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Defense Intelligence Agency, the Denali Commission, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Geospatial-Intelligence Agency, the National Labor Relations Board, the National Reconnaissance Office, the National Security Agency, the National Science Foundation, *the Overseas Private Investment Corporation,* the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

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(4) the term "head of the designated Federal entity" means the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission, any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board;

(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);

(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; [and]

(H) with respect to the Peace Corps, such term means the Director of the Peace Corps; *and*

(I) with respect to the Overseas Private Investment Corporation, such term means the Board of Directors of the Overseas Private Investment Corporation (established under section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b));

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