To provide additional funds for Federal and State facility energy resiliency programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2020

Ms. Smith introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide additional funds for Federal and State facility energy resiliency programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Open Back Better Act of 2020”.

SEC. 2. FACILITIES ENERGY RESILIENCY.

(a) DEFINITIONS.—In this section:

(1) COVERED PROJECT.—The term “covered project” means a building project at an eligible facility that—
(A) increases—

(i) resiliency, including—

(I) public health and safety;
(II) power outages;
(III) natural disasters;
(IV) indoor air quality; and
(V) any modifications necessitated by the COVID–19 pandemic;

(ii) energy efficiency;

(iii) renewable energy; and

(iv) grid integration; and

(B) may have combined heat and power and energy storage as project components.

(2) EARLY CHILDHOOD EDUCATION PROGRAM.—The term “early childhood education program” has the meaning given the term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(3) ELEMENTARY SCHOOL.—The term “elementary school” has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(4) ELIGIBLE FACILITY.—The term “eligible facility” means a public facility, as determined by the Secretary, including—
(A) a public school, including an elementary school and a secondary school;

(B) a facility used to operate an early childhood education program;

(C) a local educational agency;

(D) a medical facility;

(E) a local or State government building;

(F) a community facility;

(G) a public safety facility;

(H) a day care center;

(I) an institution of higher education;

(J) a public library; and

(K) a wastewater treatment facility.

5) ENVIRONMENTAL JUSTICE COMMUNITY.—The term "environmental justice community" means a community with significant representation of communities of color, low income communities, or Tribal and indigenous communities, that experiences, or is at risk of experiencing, higher or more adverse human health or environmental effects.

6) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).
(7) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(8) LOW INCOME.—The term “low income”, with respect to a household, means an annual household income equal to, or less than, the greater of—

(A) 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development; and

(B) 200 percent of the Federal poverty line.

(9) LOW INCOME COMMUNITY.—The term “low income community” means a census block group in which not less than 30 percent of households are low income.

(10) SECONDARY SCHOOL.—The term “secondary school” has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(11) SECRETARY.—The term “Secretary” means the Secretary of Energy.
(12) STATE.—The term "State" has the meaning given the term in section 3 of the Energy Policy and Conservation Act (42 U.S.C. 6202).

(13) STATE ENERGY PROGRAM.—The term "State Energy Program" means the State Energy Program established under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(14) TRIBAL ORGANIZATION.—

(A) IN GENERAL.—The term "tribal organization" has the meaning given the term in section 3765 of title 38, United States Code.

(B) TECHNICAL AMENDMENT.—Section 3765(4) of title 38, United States Code, is amended by striking "section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))" and inserting "section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)".

(b) STATE PROGRAMS.—

(1) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act, the Secretary shall distribute grants to States under the State Energy Program, in accordance with the allo-
cation formula established under that Program, to implement covered projects.

(2) Use of Funds.—

(A) In General.—Subject to subparagraph (B), grant funds under paragraph (1) may be used for technical assistance, project facilitation, and administration.

(B) Technical Assistance.—A State may use not more than 10 percent of grant funds received under paragraph (1) to provide technical assistance for the development, facilitation, management, oversight, and measurement of results of covered projects implemented using those funds.

(C) Environmental Justice and Other Communities.—To support communities adversely impacted by the COVID–19 pandemic, a State shall use not less than 40 percent of grant funds received under paragraph (1) to implement covered projects in environmental justice communities or low income communities.

(D) Private Financing.—A State receiving a grant under paragraph (1) shall—

(i) to the extent practicable, leverage private financing for cost-effective energy
efficiency, renewable energy, resiliency, and other smart-building improvements, such as by entering into an energy service performance contract; but

(ii) maintain the use of grant funds to carry out covered projects with more project resiliency, public health, and capital-intensive efficiency and emission reduction components than are typically available through private energy service performance contracts.

(E) GUIDANCE.—In carrying out a covered project using grant funds received under paragraph (1), a State shall, to the extent practicable, adhere to guidance developed by the Secretary pursuant to the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 115) relating to distribution of funds, if that guidance will speed the distribution of funds under this subsection.

(3) NO MATCHING REQUIREMENT.—Notwithstanding any other provision of law, a State receiving a grant under paragraph (1) shall not be required to provide any amount of matching funding.
(4) REPORT.—Not later than 1 year after the date on which grants are distributed under paragraph (1), and each year thereafter until the funds appropriated under paragraph (5) are no longer available, the Secretary shall submit a report on the use of those funds (including in the communities described in paragraph (2)(C)) to—

(A) the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate;

(B) the Subcommittee on Energy and Water Development and Related Agencies of the Committee on Appropriations of the House of Representatives;

(C) the Committee on Energy and Natural Resources of the Senate; and

(D) the Committee on Energy and Commerce of the House of Representatives.

(5) FUNDING.—In addition to any amounts made available to the Secretary to carry out the State Energy Program, there is appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $18,000,000,000 to carry out this subsection, to remain available until September 30, 2025.
(6) **Supplement, not supplant.**—Funds made available under paragraph (5) shall supplement, not supplant, any other funds made available to States for the State Energy Program or the weatherization assistance program established under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.).

(c) **Federal Energy Management Program.**—

(1) **In general.**—Not later than 60 days after the date of enactment of this Act, the Secretary shall use the funds appropriated under paragraph (4) to provide grants under the AFFECT program under the Federal Energy Management Program of the Department of Energy to implement covered projects.

(2) **Private financing.**—A recipient of a grant under paragraph (1) shall—

(A) to the extent practicable, leverage private financing for cost-effective energy efficiency, renewable energy, resiliency, and other smart-building improvements, such as by entering into an energy service performance contract; but

(B) maintain the use of grant funds to carry out covered projects with more project re-
siliency, public health, and capital-intensive effi-

ciency and emission reduction components than

are typically available through private energy

service performance contracts.

(3) REPORT.—Not later than 1 year after the
date on which grants are distributed under para-
graph (1), and each year thereafter until the funds
appropriated under paragraph (4) are no longer
available, the Secretary shall submit a report on the
use of those funds to—

(A) the Subcommittee on Energy and

Water Development of the Committee on Ap-

propriations of the Senate;

(B) the Subcommittee on Energy and

Water Development and Related Agencies of

the Committee on Appropriations of the House

of Representatives;

(C) the Committee on Energy and Natural

Resources of the Senate; and

(D) the Committee on Energy and Com-

merce of the House of Representatives.

(4) FUNDING.—In addition to any amounts

made available to the Secretary to carry out the AF-

FECT program described in paragraph (1), there is

appropriated to the Secretary, out of funds in the
Treasury not otherwise appropriated, $500,000,000 to carry out this subsection, to remain available until September 30, 2025.

(d) Tribal Organizations.—

(1) In General.—Not later than 60 days after the date of enactment of this Act, the Secretary, acting through the head of the Office of Indian Energy, shall distribute funds made available under paragraph (3) to tribal organizations to implement covered projects.

(2) Report.—Not later than 1 year after the date on which funds are distributed under paragraph (1), and each year thereafter until the funds made available under paragraph (3) are no longer available, the Secretary shall submit a report on the use of those funds to—

(A) the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate;

(B) the Subcommittee on Energy and Water Development and Related Agencies of the Committee on Appropriations of the House of Representatives;

(C) the Committee on Energy and Natural Resources of the Senate; and
(D) the Committee on Energy and Commerce of the House of Representatives.

(3) FUNDING.—There is appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $1,500,000,000 to carry out this subsection, to remain available until September 30, 2025.

(e) USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS.—

   (1) IN GENERAL.—Except as provided in paragraph (2), none of the funds made available by or pursuant to this section may be used for a covered project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

   (2) EXCEPTIONS.—The requirement under paragraph (1) shall be waived by the head of the relevant Federal department or agency in any case or category of cases in which the head of the relevant Federal department or agency determines that—

   (A) adhering to that requirement would be inconsistent with the public interest;

   (B) the iron, steel, and manufactured goods needed for the project are not produced in the United States—
(i) in sufficient and reasonably available quantities; and

(ii) in a satisfactory quality; or

(C) the inclusion of iron, steel, and relevant manufactured goods produced in the United States would increase the overall cost of the project by more than 25 percent.

(3) WAIVER PUBLICATION.—If the head of a Federal department or agency makes a determination under paragraph (2) to waive the requirement under paragraph (1), the head of the Federal department or agency shall publish in the Federal Register a detailed justification for the waiver.

(4) INTERNATIONAL AGREEMENTS.—This subsection shall be applied in a manner consistent with the obligations of the United States under all applicable international agreements.

(f) WAGE RATE REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, all laborers and mechanics employed by contractors and subcontractors on projects funded directly or assisted in whole or in part by the Federal Government pursuant to this section shall be paid wages at rates not less than those prevailing on projects of a similar character 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 known as the “Davis-Bacon Act”).

(2) AUTHORITY.—With respect to the labor standards specified in paragraph (1), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

SEC. 3. PERSONNEL.

(a) IN GENERAL.—To carry out section 2, the Secretary shall hire within the Department of Energy—

(1) not less than 300 full-time employees in the Office of Energy Efficiency and Renewable Energy;

(2) not less than 100 full-time employees, to be distributed among—

(A) the Office of General Counsel;

(B) the Office of Procurement Policy;

(C) the Golden Field Office;

(D) the National Energy Technology Laboratory; and

(E) the Office of the Inspector General; and
(3) not less than 20 full-time employees in the
Office of Indian Energy.

(b) Timeline.—Not later than 60 days after the
date of enactment of this Act, the Secretary shall—

(1) hire all personnel under subsection (a); or
(2) certify that the Secretary is unable to hire
all personnel by the date required under this sub-
section.

(e) Contract Hires.—

(1) In general.—If the Secretary makes a
certification under subsection (b)(2), the Secretary
may hire on a contract basis not more than 50 per-
cent of the personnel required to be hired under sub-
section (a).

(2) Duration.—An individual hired on a con-
tract basis under paragraph (1) shall have an em-
ployment term of not more than 1 year.

(d) Authorization of Appropriations.—There is
authorized to be appropriated to the Secretary to carry
out this section $84,000,000 for each of fiscal years 2021
through 2031.

(e) Report.—Not later than 60 days after the date
of enactment of this Act, and annually thereafter for 2
years, the Secretary shall submit a report on progress
made in carrying out subsection (a) to—
(1) the Subcommittee on Energy and Water Development of the Committee on Appropriations of the Senate;

(2) the Subcommittee on Energy and Water Development and Related Agencies of the Committee on Appropriations of the House of Representatives;

(3) the Committee on Energy and Natural Resources of the Senate; and

(4) the Committee on Energy and Commerce of the House of Representatives.