

116TH CONGRESS  
2D SESSION

# S. 4060

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

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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

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## A BILL

To provide additional funds for Federal and State facility energy resiliency programs, 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 “Open Back Better Act  
5 of 2020”.

6 **SEC. 2. FACILITIES ENERGY RESILIENCY.**

7 (a) DEFINITIONS.—In this section:

8 (1) COVERED PROJECT.—The term “covered  
9 project” means a building project at an eligible facil-  
10 ity that—

1 (A) increases—

2 (i) resiliency, including—

3 (I) public health and safety;

4 (II) power outages;

5 (III) natural disasters;

6 (IV) indoor air quality; and

7 (V) any modifications neces-  
8 sitated by the COVID–19 pandemic;

9 (ii) energy efficiency;

10 (iii) renewable energy; and

11 (iv) grid integration; and

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

14 (2) EARLY CHILDHOOD EDUCATION PRO-  
15 GRAM.—The term “early childhood education pro-  
16 gram” has the meaning given the term in section  
17 103 of the Higher Education Act of 1965 (20  
18 U.S.C. 1003).

19 (3) ELEMENTARY SCHOOL.—The term “elemen-  
20 tary school” has the meaning given the term in sec-  
21 tion 8101 of the Elementary and Secondary Edu-  
22 cation Act of 1965 (20 U.S.C. 7801).

23 (4) ELIGIBLE FACILITY.—The term “eligible fa-  
24 cility” means a public facility, as determined by the  
25 Secretary, including—

1 (A) a public school, including an elemen-  
 2 tary school and a secondary school;

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

5 (C) a local educational agency;

6 (D) a medical facility;

7 (E) a local or State government building;

8 (F) a community facility;

9 (G) a public safety facility;

10 (H) a day care center;

11 (I) an institution of higher education;

12 (J) a public library; and

13 (K) a wastewater treatment facility.

14 (5) ENVIRONMENTAL JUSTICE COMMUNITY.—

15 The term “environmental justice community” means  
 16 a community with significant representation of com-  
 17 munities of color, low income communities, or Tribal  
 18 and indigenous communities, that experiences, or is  
 19 at risk of experiencing, higher or more adverse  
 20 human health or environmental effects.

21 (6) INSTITUTION OF HIGHER EDUCATION.—The  
 22 term “institution of higher education” has the  
 23 meaning given the term in section 101 of the Higher  
 24 Education Act of 1965 (20 U.S.C. 1001).

1           (7) LOCAL EDUCATIONAL AGENCY.—The term  
2           “local educational agency” has the meaning given  
3           the term in section 8101 of the Elementary and Sec-  
4           ondary Education Act of 1965 (20 U.S.C. 7801).

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

8                   (A) 80 percent of the median income of the  
9                   area in which the household is located, as re-  
10                  ported by the Department of Housing and  
11                  Urban Development; and

12                   (B) 200 percent of the Federal poverty  
13                  line.

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

18           (10) SECONDARY SCHOOL.—The term “sec-  
19           ondary school” has the meaning given the term in  
20           section 8101 of the Elementary and Secondary Edu-  
21           cation Act of 1965 (20 U.S.C. 7801).

22           (11) SECRETARY.—The term “Secretary”  
23           means the Secretary of Energy.

1           (12) STATE.—The term “State” has the mean-  
 2           ing given the term in section 3 of the Energy Policy  
 3           and Conservation Act (42 U.S.C. 6202).

4           (13) STATE ENERGY PROGRAM.—The term  
 5           “State Energy Program” means the State Energy  
 6           Program established under part D of title III of the  
 7           Energy Policy and Conservation Act (42 U.S.C.  
 8           6321 et seq.).

9           (14) TRIBAL ORGANIZATION.—

10           (A) IN GENERAL.—The term “tribal orga-  
 11           nization” has the meaning given the term in  
 12           section 3765 of title 38, United States Code.

13           (B) TECHNICAL AMENDMENT.—Section  
 14           3765(4) of title 38, United States Code, is  
 15           amended by striking “section 4(l) of the Indian  
 16           Self-Determination and Education Assistance  
 17           Act (25 U.S.C. 450b(l))” and inserting “section  
 18           4 of the Indian Self-Determination and Edu-  
 19           cation Assistance Act (25 U.S.C. 5304)”.

20           (b) STATE PROGRAMS.—

21           (1) ESTABLISHMENT.—Not later than 60 days  
 22           after the date of enactment of this Act, the Sec-  
 23           retary shall distribute grants to States under the  
 24           State Energy Program, in accordance with the allo-

1 cation formula established under that Program, to  
2 implement covered projects.

3 (2) USE OF FUNDS.—

4 (A) IN GENERAL.—Subject to subpara-  
5 graph (B), grant funds under paragraph (1)  
6 may be used for technical assistance, project fa-  
7 cilitation, and administration.

8 (B) TECHNICAL ASSISTANCE.—A State  
9 may use not more than 10 percent of grant  
10 funds received under paragraph (1) to provide  
11 technical assistance for the development, facili-  
12 tation, management, oversight, and measure-  
13 ment of results of covered projects implemented  
14 using those funds.

15 (C) ENVIRONMENTAL JUSTICE AND OTHER  
16 COMMUNITIES.—To support communities ad-  
17 versely impacted by the COVID–19 pandemic, a  
18 State shall use not less than 40 percent of  
19 grant funds received under paragraph (1) to  
20 implement covered projects in environmental  
21 justice communities or low income communities.

22 (D) PRIVATE FINANCING.—A State receiv-  
23 ing a grant under paragraph (1) shall—

24 (i) to the extent practicable, leverage  
25 private financing for cost-effective energy

1 efficiency, renewable energy, resiliency, and  
2 other smart-building improvements, such  
3 as by entering into an energy service per-  
4 formance contract; but

5 (ii) maintain the use of grant funds to  
6 carry out covered projects with more  
7 project resiliency, public health, and cap-  
8 ital-intensive efficiency and emission reduc-  
9 tion components than are typically avail-  
10 able through private energy service per-  
11 formance contracts.

12 (E) GUIDANCE.—In carrying out a covered  
13 project using grant funds received under para-  
14 graph (1), a State shall, to the extent prac-  
15 ticable, adhere to guidance developed by the  
16 Secretary pursuant to the American Recovery  
17 and Reinvestment Act of 2009 (Public Law  
18 111–5; 123 Stat. 115) relating to distribution  
19 of funds, if that guidance will speed the dis-  
20 tribution of funds under this subsection.

21 (3) NO MATCHING REQUIREMENT.—Notwith-  
22 standing any other provision of law, a State receiv-  
23 ing a grant under paragraph (1) shall not be re-  
24 quired to provide any amount of matching funding.

1           (4) REPORT.—Not later than 1 year after the  
2           date on which grants are distributed under para-  
3           graph (1), and each year thereafter until the funds  
4           appropriated under paragraph (5) are no longer  
5           available, the Secretary shall submit a report on the  
6           use of those funds (including in the communities de-  
7           scribed in paragraph (2)(C)) to—

8                   (A) the Subcommittee on Energy and  
9                   Water Development of the Committee on Ap-  
10                  propriations of the Senate;

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

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

17                  (D) the Committee on Energy and Com-  
18                  merce of the House of Representatives.

19           (5) FUNDING.—In addition to any amounts  
20           made available to the Secretary to carry out the  
21           State Energy Program, there is appropriated to the  
22           Secretary, out of funds in the Treasury not other-  
23           wise appropriated, \$18,000,000,000 to carry out this  
24           subsection, to remain available until September 30,  
25           2025.



1           (6) SUPPLEMENT, NOT SUPPLANT.—Funds  
2       made available under paragraph (5) shall supple-  
3       ment, not supplant, any other funds made available  
4       to States for the State Energy Program or the  
5       weatherization assistance program established under  
6       part A of title IV of the Energy Conservation and  
7       Production Act (42 U.S.C. 6861 et seq.).

8       (c) FEDERAL ENERGY MANAGEMENT PROGRAM.—

9           (1) IN GENERAL.—Not later than 60 days after  
10      the date of enactment of this Act, the Secretary  
11      shall use the funds appropriated under paragraph  
12      (4) to provide grants under the AFFECT program  
13      under the Federal Energy Management Program of  
14      the Department of Energy to implement covered  
15      projects.

16          (2) PRIVATE FINANCING.—A recipient of a  
17      grant under paragraph (1) shall—

18           (A) to the extent practicable, leverage pri-  
19      vate financing for cost-effective energy effi-  
20      ciency, renewable energy, resiliency, and other  
21      smart-building improvements, such as by enter-  
22      ing into an energy service performance contract;  
23      but

24           (B) maintain the use of grant funds to  
25      carry out covered projects with more project re-

1           siliency, public health, and capital-intensive effi-  
2           ciency and emission reduction components than  
3           are typically available through private energy  
4           service performance contracts.

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

11                 (A) the Subcommittee on Energy and  
12                 Water Development of the Committee on Ap-  
13                 propriations of the Senate;

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

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

20                 (D) the Committee on Energy and Com-  
21                 merce of the House of Representatives.

22           (4) FUNDING.—In addition to any amounts  
23           made available to the Secretary to carry out the AF-  
24           FECT program described in paragraph (1), there is  
25           appropriated to the Secretary, out of funds in the

1 Treasury not otherwise appropriated, \$500,000,000  
2 to carry out this subsection, to remain available  
3 until September 30, 2025.

4 (d) TRIBAL ORGANIZATIONS.—

5 (1) IN GENERAL.—Not later than 60 days after  
6 the date of enactment of this Act, the Secretary, act-  
7 ing through the head of the Office of Indian Energy,  
8 shall distribute funds made available under para-  
9 graph (3) to tribal organizations to implement cov-  
10 ered projects.

11 (2) REPORT.—Not later than 1 year after the  
12 date on which funds are distributed under para-  
13 graph (1), and each year thereafter until the funds  
14 made available under paragraph (3) are no longer  
15 available, the Secretary shall submit a report on the  
16 use of those funds to—

17 (A) the Subcommittee on Energy and  
18 Water Development of the Committee on Ap-  
19 propriations of the Senate;

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

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

1 (D) the Committee on Energy and Com-  
 2 merce of the House of Representatives.

3 (3) FUNDING.—There is appropriated to the  
 4 Secretary, out of funds in the Treasury not other-  
 5 wise appropriated, \$1,500,000,000 to carry out this  
 6 subsection, to remain available until September 30,  
 7 2025.

8 (e) USE OF AMERICAN IRON, STEEL, AND MANUFAC-  
 9 TURED GOODS.—

10 (1) IN GENERAL.—Except as provided in para-  
 11 graph (2), none of the funds made available by or  
 12 pursuant to this section may be used for a covered  
 13 project unless all of the iron, steel, and manufac-  
 14 tured goods used in the project are produced in the  
 15 United States.

16 (2) EXCEPTIONS.—The requirement under  
 17 paragraph (1) shall be waived by the head of the rel-  
 18 evant Federal department or agency in any case or  
 19 category of cases in which the head of the relevant  
 20 Federal department or agency determines that—

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

23 (B) the iron, steel, and manufactured  
 24 goods needed for the project are not produced  
 25 in the United States—

1 (i) in sufficient and reasonably avail-  
2 able quantities; and

3 (ii) in a satisfactory quality; or

4 (C) the inclusion of iron, steel, and rel-  
5 evant manufactured goods produced in the  
6 United States would increase the overall cost of  
7 the project by more than 25 percent.

8 (3) WAIVER PUBLICATION.—If the head of a  
9 Federal department or agency makes a determina-  
10 tion under paragraph (2) to waive the requirement  
11 under paragraph (1), the head of the Federal de-  
12 partment or agency shall publish in the Federal  
13 Register a detailed justification for the waiver.

14 (4) INTERNATIONAL AGREEMENTS.—This sub-  
15 section shall be applied in a manner consistent with  
16 the obligations of the United States under all appli-  
17 cable international agreements.

18 (f) WAGE RATE REQUIREMENTS.—

19 (1) IN GENERAL.—Notwithstanding any other  
20 provision of law, all laborers and mechanics em-  
21 ployed by contractors and subcontractors on projects  
22 funded directly or assisted in whole or in part by the  
23 Federal Government pursuant to this section shall  
24 be paid wages at rates not less than those prevailing  
25 on projects of a similar character in the locality, as

1 determined by the Secretary of Labor in accordance  
 2 with subchapter IV of chapter 31 of title 40, United  
 3 States Code (commonly known as the “Davis-Bacon  
 4 Act”).

5 (2) **AUTHORITY.**—With respect to the labor  
 6 standards specified in paragraph (1), the Secretary  
 7 of Labor shall have the authority and functions set  
 8 forth in Reorganization Plan Numbered 14 of 1950  
 9 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of  
 10 title 40, United States Code.

11 **SEC. 3. PERSONNEL.**

12 (a) **IN GENERAL.**—To carry out section 2, the Sec-  
 13 retary shall hire within the Department of Energy—

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

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

18 (A) the Office of General Counsel;

19 (B) the Office of Procurement Policy;

20 (C) the Golden Field Office;

21 (D) the National Energy Technology Lab-  
 22 oratory; and

23 (E) the Office of the Inspector General;

24 and

1           (3) not less than 20 full-time employees in the  
2       Office of Indian Energy.

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

5           (1) hire all personnel under subsection (a); or

6           (2) certify that the Secretary is unable to hire  
7       all personnel by the date required under this sub-  
8       section.

9       (c) CONTRACT HIRES.—

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

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

18       (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
19       authorized to be appropriated to the Secretary to carry  
20       out this section \$84,000,000 for each of fiscal years 2021  
21       through 2031.

22       (e) REPORT.—Not later than 60 days after the date  
23       of enactment of this Act, and annually thereafter for 2  
24       years, the Secretary shall submit a report on progress  
25       made in carrying out subsection (a) to—

1           (1) the Subcommittee on Energy and Water  
2   Development of the Committee on Appropriations of  
3   the Senate;

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

7           (3) the Committee on Energy and Natural Re-  
8   sources of the Senate; and

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

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