

116TH CONGRESS
1ST SESSION

S. 2382

To amend the Energy Policy and Conservation Act to establish a program to provide loans to implement cost-effective energy efficiency measures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. MERKLEY (for himself, Mr. SANDERS, Ms. SMITH, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Energy Policy and Conservation Act to establish a program to provide loans to implement cost-effective energy efficiency measures, 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 “Community Energy
5 Savings Program Act of 2019”.

6 **SEC. 2. COMMUNITY ENERGY SAVINGS PROGRAM.**

7 (a) IN GENERAL.—The Energy Policy and Conserva-
8 tion Act is amended by inserting after section 362 (42
9 U.S.C. 6322) the following:

1 **“SEC. 362A. COMMUNITY ENERGY SAVINGS PROGRAM.**

2 “(a) PURPOSE.—The purpose of this section is to
3 help households and small businesses achieve cost savings
4 by providing loans to implement cost-effective energy effi-
5 ciency measures.

6 “(b) DEFINITIONS.—In this section:

7 “(1) COMMUNITY DEVELOPMENT FINANCIAL IN-
8 STITUTION.—The term ‘community development fi-
9 nancial institution’ means a financial institution cer-
10 tified by the Community Development Financial In-
11 stitutions Fund administered by the Secretary of the
12 Treasury.

13 “(2) ELIGIBLE ENTITY.—The term ‘eligible en-
14 tity’ means—

15 “(A) a public power group;

16 “(B) a community development financial
17 institution; and

18 “(C) an eligible unit of local government.

19 “(3) ELIGIBLE UNIT OF LOCAL GOVERN-
20 MENT.—The term ‘eligible unit of local government’
21 means any agency or political subdivision of a State.

22 “(4) ENERGY EFFICIENCY MEASURES.—The
23 term ‘energy efficiency measures’ means, with re-
24 spect to a property served by or in the service area
25 or jurisdiction, as applicable, of an eligible entity,
26 structural improvements and investments in cost-ef-

1 fective commercial technologies to increase energy
 2 efficiency (including cost-effective on- or off-grid re-
 3 newable energy, energy storage, or demand response
 4 systems).

5 “(5) HOUSEHOLD WITH A HIGH ENERGY BUR-
 6 DEN.—

7 “(A) IN GENERAL.—The term ‘household
 8 with a high energy burden’ means a low-income
 9 household the residential energy burden of
 10 which exceeds the median energy burden for all
 11 low-income households in the State in which the
 12 low-income household is located.

13 “(B) CALCULATION.—The residential en-
 14 ergy burden referred to in subparagraph (A) is
 15 the quotient obtained by dividing residential en-
 16 ergy expenditures by the annual income of the
 17 low-income household.

18 “(6) INDIAN TRIBE.—The term ‘Indian tribe’
 19 has the meaning given the term in section 4 of the
 20 Indian Self-Determination and Education Assistance
 21 Act (25 U.S.C. 5304).

22 “(7) MANUFACTURED HOME.—The term ‘man-
 23 ufactured home’—

24 “(A) has the meaning given the term in
 25 section 603 of the National Manufactured

1 Housing Construction and Safety Standards
2 Act of 1974 (42 U.S.C. 5402); and

3 “(B) includes a home described in sub-
4 paragraph (A) without regard to whether the
5 home was built before, on, or after the date on
6 which the construction and safety standards es-
7 tablished under section 604 of that Act (42
8 U.S.C. 5403) became effective.

9 “(8) PROGRAM.—The term ‘program’ means
10 the program established under subsection (c).

11 “(9) PUBLIC POWER GROUP.—The term ‘public
12 power group’ means—

13 “(A) a public utility;

14 “(B) an electric or energy cooperative;

15 “(C) a public power district; and

16 “(D) a group of 1 or more public utilities
17 or electric or energy cooperatives (commonly re-
18 ferred to as a ‘joint action agency’, ‘generation
19 and transmission cooperative’, ‘municipal power
20 association’, or ‘State cooperative association’).

21 “(10) QUALIFIED CONSUMER.—The term
22 ‘qualified consumer’ means a consumer served by or
23 in the service area or jurisdiction, as applicable, of
24 an eligible entity that has the ability to repay a loan

1 made under subsection (f), as determined by the eli-
2 gible entity.

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

5 “(12) STATE.—The term ‘State’ means—

6 “(A) a State;

7 “(B) the District of Columbia;

8 “(C) the Commonwealth of Puerto Rico;

9 and

10 “(D) any other territory or possession of
11 the United States.

12 “(c) ESTABLISHMENT.—Not later than 120 days
13 after the date of enactment of this section, the Secretary
14 shall establish a program under which the Secretary shall
15 provide grants to States and Indian tribes to provide loans
16 to eligible entities in accordance with this section.

17 “(d) GRANT FUND ALLOCATION.—

18 “(1) IN GENERAL.—Of the amount appro-
19 priated under subsection (k) for each fiscal year, the
20 Secretary shall allocate as grant funds—

21 “(A) 98 percent to be provided to States in
22 accordance with paragraph (2); and

23 “(B) 2 percent to be provided to Indian
24 tribes in accordance with paragraph (3).

1 “(2) ALLOCATION TO STATES.—Of the amount
2 allocated for all States under paragraph (1)(A), the
3 Secretary shall—

4 “(A) allocate not less than 1 percent to
5 each State described in subparagraphs (A)
6 through (C) of subsection (b)(12);

7 “(B) allocate not less than 0.5 percent to
8 each State described in subparagraph (D) of
9 that subsection; and

10 “(C) of the amount remaining after the al-
11 locations under subparagraphs (A) and (B), al-
12 locate funds to States based on the population
13 of each State as determined in the latest avail-
14 able decennial census conducted under section
15 141(a) of title 13, United States Code.

16 “(3) ALLOCATION TO INDIAN TRIBES.—Of the
17 amount allocated for Indian tribes under paragraph
18 (1)(B), the Secretary shall allocate funds to each In-
19 dian tribe participating in the program during that
20 fiscal year based on a formula established by the
21 Secretary that takes into account any factor that the
22 Secretary determines to be appropriate.

23 “(4) PUBLICATION OF ALLOCATION FOR-
24 MULAS.—Not later than 90 days before the begin-
25 ning of each fiscal year for which grants are pro-

vided to States and Indian tribes under this section,
the Secretary shall publish in the Federal Register
the formulas for allocation established under this
subsection.

“(5) ADMINISTRATIVE COSTS.—Of the amount
allocated to a State or Indian tribe under this sub-
section, not more than 15 percent shall be used by
the State or Indian tribe for the administrative costs
of administering loans.

“(e) LOANS BY STATES AND INDIAN TRIBES TO ELI-
GIBLE ENTITIES.—

“(1) IN GENERAL.—Under the program, a
State or Indian tribe shall make loans to eligible en-
tities to make loans to qualified consumers—

“(A) to implement cost-effective energy ef-
ficiency measures; and

“(B) in accordance with subsection (f).

“(2) STATE ENERGY OFFICES.—A State shall
carry out paragraph (1) through the State energy
office that is responsible for developing a State en-
ergy conservation plan under section 362.

“(3) PRIORITY.—In making loans under para-
graph (1), a State or Indian tribe shall give priority
to public power groups.

“(4) REQUIREMENTS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (C), as a condition of receiving a loan
3 under this subsection, an eligible entity shall—

4 “(i) establish a list of energy effi-
5 ciency measures that are expected to de-
6 crease the energy use or costs of qualified
7 consumers;

8 “(ii) prepare an implementation plan
9 for use of the loan funds, including the use
10 of any interest to be received under sub-
11 section (f)(4);

12 “(iii) establish an appropriate meas-
13 urement and verification system to en-
14 sure—

15 “(I) the effectiveness of the en-
16 ergy efficiency loans made by the eli-
17 gible entity; and

18 “(II) that there is no conflict of
19 interest in any loan provided by the
20 eligible entity;

21 “(iv) demonstrate expertise in the ef-
22 fective implementation of energy efficiency
23 measures;

24 “(v) ensure that a portion of the loan
25 funds, which may be determined by the

1 State or Indian tribe, are used to provide
2 loans to qualified consumers that are
3 households with a high energy burden; and

4 “(vi) give priority to providing loans
5 to qualified consumers that own homes or
6 other real property that pose health risks
7 to the occupants of the property that may
8 be mitigated by energy efficiency measures,
9 as determined by the State or Indian tribe.

10 “(B) REVISION OF LIST OF ENERGY EFFI-
11 CIENCY MEASURES.—Subject to the approval of
12 the State or Indian tribe, as applicable, an eligi-
13 ble entity may update the list required under
14 subparagraph (A)(i) to account for newly avail-
15 able efficiency technologies.

16 “(C) EXISTING ENERGY EFFICIENCY PRO-
17 GRAMS.—An eligible entity that has established
18 an energy efficiency program for qualified con-
19 sumers before the date of enactment of this sec-
20 tion may use an existing list of energy efficiency
21 measures, implementation plan, and measure-
22 ment and verification system for that program
23 to satisfy the applicable requirements under
24 subparagraph (A), if the State or Indian tribe,
25 as applicable, determines that the list, plan, or

1 system, as applicable, is consistent with the
2 purposes of this section.

3 “(5) NO INTEREST.—A loan under this sub-
4 section shall bear no interest.

5 “(6) TERM.—The term of a loan provided to an
6 eligible entity under paragraph (1) shall not exceed
7 20 years after the date on which the loan is issued.

8 “(7) ADVANCE.—

9 “(A) IN GENERAL.—In providing a loan to
10 an eligible entity under paragraph (1), a State
11 or Indian tribe may provide an advance of loan
12 funds on request of the eligible entity.

13 “(B) AMOUNT LIMITATION.—Any advance
14 provided to an eligible entity under subpara-
15 graph (A) in any single year shall not exceed 50
16 percent of the approved loan amount.

17 “(C) REPAYMENT.—The repayment of an
18 advance under subparagraph (A) shall be amor-
19 tized for a period of not more than 10 years.

20 “(8) SPECIAL ADVANCE FOR START-UP ACTIVI-
21 TIES.—

22 “(A) IN GENERAL.—In providing a loan to
23 an eligible entity under paragraph (1), a State
24 or Indian tribe may provide a special advance
25 on request of the eligible entity for assistance in

1 defraying the start-up costs of the eligible enti-
 2 ty, as determined by the State or Indian tribe,
 3 as applicable, of providing loans to qualified
 4 consumers under subsection (f).

5 “(B) LIMITATION.—A special advance
 6 shall be provided to an eligible entity under
 7 subparagraph (A) only during the 10-year pe-
 8 riod beginning on the date on which the loan is
 9 issued to that eligible entity.

10 “(C) AMOUNT.—The amount of a special
 11 advance provided under subparagraph (A) shall
 12 not be greater than 5 percent of the approved
 13 loan amount.

14 “(D) REPAYMENT.—Repayment of a spe-
 15 cial advance provided under subparagraph
 16 (A)—

17 “(i) shall be required during the 10-
 18 year period beginning on the date on which
 19 the special advance is made; and

20 “(ii) may be deferred to the end of the
 21 10-year period described in clause (i) at
 22 the election of the eligible entity.

23 “(9) REVOLVING LOAN FUND.—

24 “(A) IN GENERAL.—As a condition of par-
 25 ticipating in the program, a State or Indian

1 tribe shall use the funds repaid to the State or
 2 Indian tribe under loans offered under this sub-
 3 section to issue new loans under this subsection.

4 “(B) ADMINISTRATIVE COSTS.—Not more
 5 than 10 percent of the repaid funds described
 6 in subparagraph (A) may be used for the ad-
 7 ministrative cost of issuing new loans from
 8 those repaid funds under this subsection.

9 “(f) LOANS BY ELIGIBLE ENTITIES TO QUALIFIED
 10 CONSUMERS.—

11 “(1) USE OF LOAN.—

12 “(A) IN GENERAL.—A loan made by an el-
 13 igible entity to a qualified consumer using loan
 14 funds provided by a State or Indian tribe under
 15 subsection (e)—

16 “(i) shall be used to finance energy ef-
 17 ficiency measures for the purpose of de-
 18 creasing the energy use or costs of the
 19 qualified consumer by an amount that en-
 20 sures, to the maximum extent practicable,
 21 that the applicable loan term described in
 22 subparagraph (B) shall not be an undue fi-
 23 nancial burden on the qualified consumer,
 24 as determined by the eligible entity;

1 “(ii) shall not be used to fund pur-
 2 chases of, or modifications to, personal
 3 property unless the personal property is or
 4 becomes attached to real property as a fix-
 5 ture;

6 “(iii) may be used to upgrade a man-
 7 ufactured home, regardless of the classi-
 8 fication of the home as real or personal
 9 property; and

10 “(iv) may be used to finance the re-
 11 placement of a manufactured home—

12 “(I) if the cost of upgrading the
 13 manufactured home is excessive, as
 14 determined by the eligible entity; and

15 “(II) with priority given to a
 16 manufactured home that was con-
 17 structed before June 15, 1976.

18 “(B) LOAN TERM DESCRIBED.—The loan
 19 term referred to in subparagraph (A)(i) is—

20 “(i) in the case of a manufactured
 21 home replacement, not more than 20
 22 years; and

23 “(ii) in the case of any other energy
 24 efficiency measure, not more than 15
 25 years.

1 “(2) REPAYMENT.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), a loan described in paragraph (1)(A)
4 shall be repaid by the qualified consumer
5 through charges added to an existing or new
6 electric or recurring service bill for the property
7 of the qualified consumer for, or at which, en-
8 ergy efficiency measures are being implemented.

9 “(B) ALTERNATIVE REPAYMENT.—Repay-
10 ment under subparagraph (A) shall not pre-
11 clude—

12 “(i) the voluntary prepayment of the
13 loan by the qualified consumer; or

14 “(ii) the use of any additional repay-
15 ment mechanism, including a tariffed on-
16 bill mechanism, that—

17 “(I) has appropriate risk mitiga-
18 tion features, as determined by the el-
19 igible entity; or

20 “(II) is required due to the quali-
21 fied consumer no longer being a cus-
22 tomer of the eligible entity.

23 “(3) ENERGY ASSESSMENT.—

24 “(A) IN GENERAL.—Prior to the installa-
25 tion of energy efficiency measures at the prop-

erty of a qualified consumer that receives a loan from an eligible entity under this section, and to assist in the selection of the energy efficiency measures to be installed, the eligible entity shall conduct an energy assessment or audit to determine the impact of proposed energy efficiency measures on—

“(i) the energy costs and consumption of the qualified consumer; and

“(ii) the health and safety of the occupants of the property on which the energy efficiency measures are to be installed.

“(B) FIELD OR ONLINE ASSESSMENT.—An energy assessment or audit under subparagraph (A) may be conducted in the field or online, as determined by the State or Indian tribe that has issued a loan to the eligible entity under subsection (e).

“(4) INTEREST.—A loan described in paragraph (1)(A) may bear interest, not to exceed 5 percent, which may be used—

“(A) to establish a loan loss reserve for the eligible entity;

1 “(B) to offset the personnel and program
2 costs of the eligible entity in providing the loan;
3 and

4 “(C) for any other related purpose, as de-
5 termined by the eligible entity, in consultation
6 with the State or Indian tribe that has issued
7 a loan to the eligible entity under subsection
8 (e).

9 “(5) OUTSIDE CONTRACTS.—An eligible entity
10 may enter into 1 or more contracts with 1 or more
11 qualified entities, as determined by the State or In-
12 dian tribe that has issued a loan to the eligible enti-
13 ty under subsection (e)—

14 “(A) to assist the eligible entity in admin-
15 istering the loans described in paragraph
16 (1)(A); and

17 “(B) to carry out any of the requirements
18 of the eligible entity described in subsection
19 (e)(4)(A).

20 “(g) DIRECT LOANS FROM STATES AND INDIAN
21 TRIBES.—A State or Indian tribe may act as an eligible
22 entity under subsection (f) to provide loans directly to
23 qualified consumers—

24 “(1) in accordance with that subsection; and

1 “(2) if the State or Indian tribe satisfies the re-
2 quirements under subsection (e)(4), as determined
3 by the Secretary.

4 “(h) PROGRAM ADMINISTRATION.—

5 “(1) PLAN.—Not later than 120 days after the
6 date of enactment of this section, the Secretary shall
7 establish and begin carrying out a plan—

8 “(A) to measure and verify the success of
9 the program in implementing energy efficiency
10 measures;

11 “(B) provide training to the employees of
12 eligible entities relating to carrying out the re-
13 quirements of eligible entities under this sec-
14 tion; and

15 “(C) provide technical assistance to States,
16 Indian tribes, and eligible entities relating to
17 carrying out the requirements of this section.

18 “(2) PUBLIC AWARENESS.—Not later than 120
19 days after the date of enactment of this section, the
20 Secretary shall establish and begin carrying out a
21 plan to make eligible entities and the general public
22 aware of the program, including by developing a
23 marketing program to raise awareness of the pro-
24 gram.

25 “(3) OUTSIDE CONTRACTS.—

1 “(A) IN GENERAL.—The Secretary may
2 enter into 1 or more contracts with 1 or more
3 qualified entities, as determined by the Sec-
4 retary, to carry out paragraphs (1) and (2).

5 “(B) USE OF SUBCONTRACTORS AUTHOR-
6 IZED.—A qualified entity that enters into a
7 contract with the Secretary under subparagraph
8 (A) may use 1 or more subcontractors to assist
9 the qualified entity in carrying out the contract.

10 “(4) ACCOUNTING.—The Secretary, and each
11 State and Indian tribe participating in the program,
12 shall take appropriate steps to streamline the ac-
13 counting requirements for eligible entities under the
14 program while maintaining adequate assurances of
15 the repayment of the loans made to those eligible en-
16 tities under the program.

17 “(i) EFFECT ON AUTHORITY.—Nothing in this sec-
18 tion shall impede, impair, or modify the authority of the
19 Secretary to offer loans or grants under any other law.

20 “(j) REPORT.—

21 “(1) IN GENERAL.—Not later than 15 months
22 after the date on which the program is established,
23 and 90 days after the end of each fiscal year for
24 each fiscal year thereafter, the Secretary shall sub-
25 mit to the appropriate committees of Congress and

1 make publicly available a report that describes, with
2 respect to the program—

3 “(A) the number of applications received
4 by each State and Indian tribe from eligible en-
5 tities for that fiscal year;

6 “(B) the number of loans made by each
7 State and Indian tribe for that fiscal year—

8 “(i) to eligible entities; and

9 “(ii) directly to qualified consumers;

10 “(C) the eligible entities that are the re-
11 cipients of the loans described in subparagraph
12 (B)(i); and

13 “(D) the manner in which the program
14 was advertised to eligible entities and the gen-
15 eral public.

16 “(2) CONSULTATION.—The Secretary shall con-
17 sult with and obtain information from States and
18 Indian tribes in preparing the report submitted
19 under paragraph (1).

20 “(k) AUTHORIZATION OF APPROPRIATIONS.—

21 “(1) IN GENERAL.—There is authorized to be
22 appropriated to the Secretary to carry out this sec-
23 tion \$150,000,000 for each of fiscal years 2021
24 through 2026.

1 “(2) SUPPLEMENT NOT SUPPLANT.—The fund-
 2 ing provided to a State or Indian tribe under sub-
 3 section (d) for each fiscal year shall be used to sup-
 4 plement, not supplant, any Federal, State, or other
 5 funds otherwise made available to that State or In-
 6 dian tribe under—

7 “(A) a State energy conservation plan es-
 8 tablished under part D of title III of the En-
 9 ergy Policy and Conservation Act (42 U.S.C.
 10 6321 et seq.); or

11 “(B) the Weatherization Assistance Pro-
 12 gram for Low-Income Persons established
 13 under part A of title IV of the Energy Con-
 14 servation and Production Act (42 U.S.C. 6861
 15 et seq.).”.

16 (b) STATE ENERGY CONSERVATION PLANS.—Section
 17 362(d)(5) of the Energy Policy and Conservation Act (42
 18 U.S.C. 6322(d)(5)) is amended—

19 (1) in subparagraph (A), by striking “or” at
 20 the end;

21 (2) in subparagraph (B), by inserting “or”
 22 after the semicolon; and

23 (3) by adding at the end the following:

24 “(C) which may include the community en-
 25 ergy savings program under section 362A;”.

1 (c) TECHNICAL AMENDMENT.—The table of contents
2 for the Energy Policy and Conservation Act (Public Law
3 94–163; 89 Stat. 872) is amended by inserting after the
4 item relating to section 362 the following:

“Sec. 362A. Community energy savings program.”.

