

## 117TH CONGRESS 1ST SESSION H.R. 1485

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

## IN THE HOUSE OF REPRESENTATIVES

March 2, 2021

Ms. Blunt Rochester introduced the following bill; which was referred to the Committee on Energy and Commerce

## 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 2021".
- 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-
- 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	eation 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(1) 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

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

- (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.

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 pursuant to paragraph (5) are no
5	longer available, the Secretary shall submit a report
6	on the use of those funds (including in the commu-
7	nities described 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 authorized to be ap-
22	propriated to the Secretary \$18,000,000,000 to
23	carry out this subsection to remain available until

September 30, 2026.

NOT SUPPLANT.—Funds SUPPLEMENT, (6)made available under paragraph (5) shall supple-ment, 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 seg.). (c) Federal Energy Management Program.— 

- (1) In General.—Beginning 60 days after the date of enactment of this Act, the Secretary shall use funds appropriated pursuant to 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-

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 funds ap-
8	propriated pursuant to 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	authorized to be appropriated to the Secretary

1	\$500,000,000 to carry out this subsection, to remain
2	available until September 30, 2026.
3	(d) Tribal Organizations.—
4	(1) In general.—Not later than 60 days after
5	the date of enactment of this Act, the Secretary, act-
6	ing through the head of the Office of Indian Energy,
7	shall distribute funds made available under para-
8	graph (3) to tribal organizations to implement cov-
9	ered projects.
10	(2) Report.—Not later than 1 year after the
11	date on which funds are distributed under para-
12	graph (1), and each year thereafter until the funds
13	made available under paragraph (3) are no longer
14	available, the Secretary shall submit a report on the
15	use of those funds to—
16	(A) the Subcommittee on Energy and
17	Water Development of the Committee on Ap-
18	propriations of the Senate;
19	(B) the Subcommittee on Energy and
20	Water Development and Related Agencies of
21	the Committee on Appropriations of the House
22	of Representatives;
23	(C) the Committee on Energy and Natural
24	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 authorized to be ap-
4	propriated to the Secretary \$1,500,000,000 to carry
5	out this subsection, to remain available until Sep-
6	tember 30, 2026.
7	(e) Use of American Iron, Steel, and Manufac-
8	TURED GOODS.—
9	(1) In general.—Except as provided in para-
10	graph (2), none of the funds made available by or
11	pursuant to this section may be used for a covered
12	project unless all of the iron, steel, and manufac-
13	tured goods used in the project are produced in the
14	United States.
15	(2) Exceptions.—The requirement under
16	paragraph (1) shall be waived by the head of the rel-
17	evant Federal department or agency in any case or
18	category of cases in which the head of the relevant
19	Federal department or agency determines that—
20	(A) adhering to that requirement would be
21	inconsistent with the public interest;
22	(B) the iron, steel, and manufactured
23	goods needed for the project are not produced
24	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

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 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 2022 21 through 2032. 22 (e) Report.—Not later than 60 days after the date 23 of enactment of this Act, and annually thereafter for 2 years, the Secretary shall submit a report on progress

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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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