

116TH CONGRESS  
2D SESSION

# S. 4147

To establish the Financing Energy Efficient Manufacturing Program at the Department of Energy to provide financial assistance to promote energy efficiency and onsite renewable technologies in manufacturing facilities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 1, 2020

Mr. MERKLEY 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 establish the Financing Energy Efficient Manufacturing Program at the Department of Energy to provide financial assistance to promote energy efficiency and onsite renewable technologies in manufacturing facilities, 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 “Job Creation through  
5 Energy Efficient Manufacturing Act”.

### 6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) ENERGY MANAGEMENT PLAN.—The term  
2           “energy management plan” means a plan estab-  
3           lished under section 3(c)(4).

4           (2) INDIAN TRIBE.—The term “Indian tribe”  
5           has the meaning given the term in section 4 of the  
6           Indian Self-Determination and Education Assistance  
7           Act (25 U.S.C. 5304).

8           (3) PROGRAM.—The term “program” means  
9           the Financing Energy Efficient Manufacturing Pro-  
10          gram established under section 3(a).

11          (4) PROGRAM MANAGER.—The term “program  
12          manager” means a qualified entity that receives a  
13          grant under section 3(a).

14          (5) PROJECT.—The term “project” means an  
15          energy efficiency improvement project carried out by  
16          a small- or medium-sized manufacturer using grant  
17          funds distributed by a project manager.

18          (6) QUALIFIED ENTITY.—The term “qualified  
19          entity” means—

20                (A) a State energy office;

21                (B) an Indian tribe;

22                (C) a nonprofit organization that—

23                    (i) is focused on providing energy effi-  
24                    ciency or renewable energy services; and

1 (ii) receives funding from a State, In-  
 2 dian tribe, or utility;

3 (D) an electric cooperative group; and

4 (E) an entity with a public-private partner-  
 5 ship under the Hollings Manufacturing Exten-  
 6 sion Partnership established under section  
 7 25(b) of the National Institute of Standards  
 8 and Technology Act (15 U.S.C. 278k(b)).

9 (7) SECRETARY.—The term “Secretary” means  
 10 the Secretary of Energy.

11 (8) SMALL- OR MEDIUM-SIZED MANUFAC-  
 12 Turer.—The term “small- or medium-sized manu-  
 13 facturer” means a manufacturing establishment—

14 (A) classified in Sector 31, 32, or 33 in the  
 15 North American Industry Classification System;  
 16 and

17 (B) that employs not more than 750 em-  
 18 ployees.

19 **SEC. 3. FINANCING ENERGY EFFICIENT MANUFACTURING**  
 20 **PROGRAM.**

21 (a) ESTABLISHMENT.—The Secretary shall establish  
 22 a program, to be known as the “Financing Energy Effi-  
 23 cient Manufacturing Program” to provide grants to quali-  
 24 fied entities to fund energy efficiency improvement  
 25 projects in the manufacturing sector.

1 (b) GRANT APPLICATIONS; SELECTION OF GRANT  
2 RECIPIENTS.—

3 (1) GRANT APPLICATIONS.—

4 (A) IN GENERAL.—Not later than 180  
5 days after the date of enactment of this Act,  
6 qualified entities desiring a grant under sub-  
7 section (a) shall submit to the Secretary an ap-  
8 plication in such manner and containing such  
9 information as the Secretary may require, in-  
10 cluding a description of—

11 (i) how the qualified entity will work  
12 with small- and medium-sized manufactur-  
13 ers to assess the most promising opportu-  
14 nities for energy efficiency improvements;

15 (ii) how the qualified entity will work  
16 with small- and medium-sized manufactur-  
17 ers and, if appropriate, licensed engineers  
18 to establish an energy management plan  
19 for the small- or medium-sized manufac-  
20 turer to carry out a project;

21 (iii) the methods and cost-sharing  
22 plans the qualified entity will use to dis-  
23 tribute funds to small- and medium-sized  
24 manufacturers to subsidize the costs of  
25 carrying out a project;

1 (iv) the standards by which the quali-  
2 fied entity will set energy efficiency goals  
3 for a project that will result in meaningful  
4 reductions in electricity or natural gas use  
5 by the small- or medium-sized manufac-  
6 turer carrying out the project;

7 (v) how the qualified entity will pro-  
8 vide support to the small- or medium-sized  
9 manufacturer carrying out a project during  
10 the implementation of the energy manage-  
11 ment plan;

12 (vi)(I) any history of the qualified en-  
13 tity of working collaboratively with the re-  
14 gional technical assistance programs of the  
15 Department of Energy; and

16 (II) how the qualified entity plans to  
17 involve the regional technical assistance  
18 programs in the activities to be funded by  
19 a grant; and

20 (vii) how the qualified entity will col-  
21 lect measurements throughout the imple-  
22 mentation of the energy management  
23 plan—

1 (I) to demonstrate how energy ef-  
 2 ficiency improvements are being  
 3 achieved; and

4 (II) to maximize opportunities  
 5 for project success.

6 (B) PARTNERSHIPS.—Two or more quali-  
 7 fied entities may form a partnership to apply,  
 8 and act as program manager, for a grant under  
 9 this subsection.

10 (2) SELECTION OF GRANT RECIPIENTS.—

11 (A) IN GENERAL.—Not later than 90 days  
 12 after the date on which the Secretary receives  
 13 an application under paragraph (1), the Sec-  
 14 retary shall—

15 (i) review the application;

16 (ii) provide the applicant with an op-  
 17 portunity to respond to any questions of  
 18 the Secretary regarding the application;  
 19 and

20 (iii) select or deny the applicant based  
 21 on the criteria described in subparagraph  
 22 (B).

23 (B) SELECTION CRITERIA.—

24 (i) IN GENERAL.—The Secretary shall  
 25 select for grants under this subsection

qualified entities that demonstrate a history of successfully implementing energy efficiency improvement programs for small- and medium-sized manufacturers.

(ii) PRIORITY.—In making selections under clause (i), the Secretary shall give priority to qualified entities that demonstrate—

(I) effective methods for reducing barriers to entry that might otherwise prevent small- and medium-sized manufacturers from participating in the subgrant program under subsection (c);

(II) flexibility in addressing the needs of different small- and medium-sized manufacturers; and

(III) a commitment to hiring for projects contractors that comply with the labor requirements described in subsection (d)(2).

(c) SUBGRANTS FOR ENERGY EFFICIENCY IMPROVEMENTS.—

(1) IN GENERAL.—A qualified entity (including a partnership of 1 or more qualified entities under

1 subsection (b)(1)(B)) that receives a grant under  
2 subsection (a) shall act as a program manager to  
3 distribute subgrants to small- and medium-sized  
4 manufacturers located in the State in which the pro-  
5 gram manager is located to carry out projects—

6 (A) to improve the energy efficiency of the  
7 small- or medium-sized manufacturer; and

8 (B) to develop technologies to reduce elec-  
9 tricity or natural gas use by the small- or me-  
10 dium-sized manufacturer.

11 (2) APPLICATIONS.—A small- or medium-sized  
12 manufacturer desiring a subgrant under paragraph  
13 (1) shall submit to the program manager an applica-  
14 tion at such time, in such manner, and containing  
15 such information as the program manager may re-  
16 quire, including a proposal describing the project to  
17 be carried out using the subgrant funds.

18 (3) PRIORITY.—In selecting small- or medium-  
19 sized manufacturers for subgrants under this sub-  
20 section, the program manager shall give priority to  
21 small- or medium-sized manufacturers that commit  
22 to hiring for projects contractors that comply with  
23 the labor requirements described in subsection  
24 (d)(2).

1           (4) ELIGIBILITY REQUIREMENTS.—To be eligi-  
2           ble to receive a subgrant under paragraph (1), a  
3           small- or medium-sized manufacturer shall be a pri-  
4           vate, nongovernmental entity.

5           (5) ENERGY MANAGEMENT PLANS.—Each  
6           small- or medium-sized manufacturer receiving a  
7           subgrant under paragraph (1), in consultation with  
8           the program manager and, if appropriate, 1 or more  
9           licensed engineers, shall establish an energy manage-  
10          ment plan for the small- or medium-sized manufac-  
11          turer to carry out the project.

12          (6) EFFECT ON TITLE TO PROPERTY.—The re-  
13          ceipt of Federal funds under this subsection shall  
14          not prohibit an entity that purchased equipment or  
15          other property using those funds from owning sole,  
16          permanent title to the equipment or other property.

17          (d) CONTRACTORS.—

18               (1) IN GENERAL.—Program managers and  
19               small- or medium-sized manufacturers may hire, if  
20               necessary, contractors to perform work relating to  
21               the installation, repair, or maintenance of equipment  
22               used under a project.

23               (2) LABOR REQUIREMENTS.—In an application  
24               for a grant or subgrant under this section, a pro-  
25               gram manager or a small- or medium-sized manu-

1       factorer, respectively, may commit to hiring contrac-  
2       tors that represent to the best of the knowledge and  
3       belief of the contractor, whether, during the 3-year  
4       period preceding the date of application, any admin-  
5       istrative merits determination, arbitral award or de-  
6       cision, or civil judgment (as defined in guidance  
7       issued by the Secretary of Labor) was rendered  
8       against the contractor for violations of—

9               (A) the National Labor Relations Act (29  
10              U.S.C. 151 et seq.);

11             (B) the Fair Labor Standards Act of 1938  
12              (29 U.S.C. 201 et seq.);

13             (C) the Age Discrimination in Employment  
14              Act of 1967 (29 U.S.C. 621 et seq.);

15             (D) the Occupational Safety and Health  
16              Act of 1970 (29 U.S.C. 651 et seq.);

17             (E) the Migrant and Seasonal Agricultural  
18              Worker Protection Act (29 U.S.C. 1801 et  
19              seq.);

20             (F) the Family and Medical Leave Act of  
21              1993 (29 U.S.C. 2611 et seq.);

22             (G) subchapter IV of chapter 31 of part A  
23              of subtitle II of title 40, United States Code  
24              (commonly referred to as the “Davis-Bacon  
25              Act”);

1 (H) chapter 67 of title 41, United States  
2 Code;

3 (I) title VII of the Civil Rights Act of 1964  
4 (42 U.S.C. 2000e et seq.);

5 (J) the Americans with Disabilities Act of  
6 1990 (42 U.S.C. 12101 et seq.);

7 (K) Executive Order 11246 (42 U.S.C.  
8 2000e note) (relating to equal employment op-  
9 portunity);

10 (L) Executive Order 13658 (79 Fed. Reg.  
11 9851 (February 20, 2014)) (relating to estab-  
12 lishing a minimum wage for contractors); or

13 (M) equivalent State laws.

14 (3) ADDITIONAL LABOR REQUIREMENTS.—A  
15 program manager or small- or medium-sized manu-  
16 facturer receiving a grant or subgrant, respectively,  
17 under this section that has committed to complying  
18 with the labor requirements described in paragraph  
19 (2)—

20 (A) shall provide each contractor an oppor-  
21 tunity to disclose any steps taken to correct a  
22 violation of, or improve compliance with, a law  
23 or Executive order described in any of subpara-  
24 graphs (A) through (M) of paragraph (2), in-

cluding any agreements entered into with an enforcement agency;

(B) shall give preference to contractors that have the fewest number of violations (particularly serious, repeated, willful, or pervasive violations) of the laws and Executive orders described in subparagraphs (A) through (M) of paragraph (2); and

(C) shall not hire contractors that fail to take steps to correct violations of, or improve compliance with, a law or Executive order described in any of subparagraphs (A) through (M) of paragraph (2).

(e) AMERICAN IRON, STEEL, AND MANUFACTURED PRODUCTS.—

(1) DEFINITIONS.—In this subsection:

(A) IRON OR STEEL MANUFACTURED PRODUCT.—The term “iron or steel manufactured product” includes any construction material or end product (as those terms are defined in subpart 25.003 of the Federal Acquisition Regulation) that does not otherwise qualify as an iron or steel product, including—

(i) an electrical component;

1 (ii) a non-ferrous building material,  
2 including—

3 (I) aluminum and  
4 polyvinylchloride;

5 (II) glass;

6 (III) fiber optics;

7 (IV) plastic;

8 (V) wood;

9 (VI) masonry;

10 (VII) rubber;

11 (VIII) manufactured stone; and

12 (IX) any other non-ferrous build-  
13 ing materials; and

14 (iii) any unmanufactured construction  
15 material.

16 (B) PRODUCED IN THE UNITED STATES.—

17 (i) IN GENERAL.—The term “pro-  
18 duced in the United States”—

19 (I) with respect to an iron or  
20 steel product or an iron or steel man-  
21 ufactured product, means that all  
22 manufacturing processes for, and ma-  
23 terials and components of, the iron or  
24 steel product or iron or steel manufac-  
25 tured product, from the initial melting

1 stage through the application of coat-  
2 ings, occurred in the United States;  
3 and

4 (II) with respect to an iron or  
5 steel manufactured product, means  
6 that—

7 (aa) the iron or steel manu-  
8 factured product was manufac-  
9 tured in the United States; and

10 (bb) the cost of the compo-  
11 nents of the iron or steel manu-  
12 factured product that were  
13 mined, produced, or manufac-  
14 tured in the United States is  
15 greater than 60 percent of the  
16 total cost of the components of  
17 the iron or steel manufactured  
18 product.

19 (ii) EXCLUSIONS.—The term “pro-  
20 duced in the United States”, with respect  
21 to an iron or steel product or an iron or  
22 steel manufactured product, does not in-  
23 clude an iron or steel product or an iron  
24 or steel manufactured product that was  
25 manufactured—

- 1 (I) abroad from semi-finished  
2 steel or iron from the United States;  
3 or  
4 (II) in the United States from  
5 semi-finished steel or iron of foreign  
6 origin.

7 (2) REQUIREMENT.—Funds made available  
8 under the program may not be used for a project  
9 unless all of the iron and steel products and iron  
10 and steel manufactured products used in the project  
11 are produced in the United States.

12 (3) WAIVER.—

13 (A) IN GENERAL.—On request of the re-  
14 cipient of a grant under the program, the Sec-  
15 retary may grant for the project of the recipient  
16 of the grant a waiver of the requirement de-  
17 scribed in paragraph (2) if the Secretary finds  
18 that—

19 (i) the application of paragraph (2)  
20 would be inconsistent with the public inter-  
21 est;

22 (ii) iron or steel products or iron or  
23 steel manufactured products are not pro-  
24 duced in the United States—

1 (I) in sufficient and reasonably  
2 available quantities; or

3 (II) of a satisfactory quality; or

4 (iii) the inclusion of iron or steel prod-  
5 ucts or iron or steel manufactured prod-  
6 ucts produced in the United States would  
7 increase the cost of the overall project by  
8 greater than 25 percent.

9 (B) PUBLIC NOTICE.—On receipt of a re-  
10 quest for a waiver under subparagraph (A), the  
11 Secretary shall—

12 (i) make available to the public, in-  
13 cluding by electronic means, including on  
14 the official public website of the Depart-  
15 ment of Energy, on an informal basis, a  
16 copy of the request and all information  
17 available to the Secretary relating to the  
18 request; and

19 (ii) provide for informal public input  
20 on the request for a period of not fewer  
21 than 15 days before making with respect  
22 to the request the finding described in sub-  
23 paragraph (A).

24 (f) REPORTING REQUIREMENTS.—

1           (1) IN GENERAL.—Each program manager  
2 shall—

3                   (A) determine what data shall be re-  
4 quired—

5                           (i) to be collected by or from each  
6 small- or medium-sized manufacturer re-  
7 ceiving a subgrant under subsection (c);  
8 and

9                           (ii) to be submitted to the program  
10 manager to permit analysis of the subgrant  
11 program under subsection (c); and

12                   (B) develop metrics to determine the suc-  
13 cess of the subgrant program under subsection  
14 (c).

15           (2) PROVISION OF DATA.—As a condition of re-  
16 ceiving a subgrant under subsection (c), a small- or  
17 medium-sized manufacturer shall provide to the pro-  
18 gram manager relevant data, as determined by the  
19 program manager under paragraph (1)(A).

20           (3) PROPRIETARY INFORMATION.—In carrying  
21 out this subsection, each program manager, as ap-  
22 propriate, shall provide for the protection of propri-  
23 etary information and intellectual property rights.

24           (g) FUNDING.—

1           (1) IN GENERAL.—Out of amounts made avail-  
2           able to the Secretary and not otherwise obligated,  
3           the Secretary shall use to carry out this section not  
4           more than \$600,000,000.

5           (2) REQUIREMENTS FOR PROGRAM MAN-  
6           AGERS.—A program manager shall use not greater  
7           than 7 percent of the grant funds received by the  
8           program manager, at the discretion of the program  
9           manager—

10                 (A) to hire and train staff to assist the  
11                 program manager in administering the  
12                 subgrant program of the program manager; and

13                 (B) to market the subgrant program to  
14                 small- and medium-sized manufacturers.

15           (3) MANAGEMENT AND OVERSIGHT.—The Sec-  
16           retary may use not greater than 0.25 percent of the  
17           funds made available under paragraph (1) to carry  
18           out subsection (e).

○