

AMENDMENT TO
RULES COMMITTEE PRINT 116-54
OFFERED BY MS. BLUNT ROCHESTER OF
DELAWARE

Page 1677, after line 16, insert the following:

1 **Subtitle E—Open Back Better**

2 **SEC. 33501. SHORT TITLE.**

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

5 **SEC. 33502. FACILITIES ENERGY RESILIENCY.**

6 (a) DEFINITIONS.—In this section:

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

10 (A) increases—

11 (i) resiliency, including—

12 (I) public health and safety;

13 (II) power outages;

14 (III) natural disasters;

15 (IV) indoor air quality; and

16 (V) any modifications neces-
17 sitated by the COVID–19 pandemic;

18 (ii) energy efficiency;

1 (iii) renewable energy; and

2 (iv) grid integration; and

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

5 (2) EARLY CHILDHOOD EDUCATION PRO-
6 GRAM.—The term “early childhood education pro-
7 gram” has the meaning given the term in section
8 103 of the Higher Education Act of 1965 (20
9 U.S.C. 1003).

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

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

17 (A) a public school, including an elemen-
18 tary school and a secondary school;

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

21 (C) a local educational agency;

22 (D) a medical facility;

23 (E) a local or State government building;

24 (F) a community facility;

25 (G) a public safety facility;

- 1 (H) a day care center;
- 2 (I) an institution of higher education;
- 3 (J) a public library; and
- 4 (K) a wastewater treatment facility.

5 (5) ENVIRONMENTAL JUSTICE COMMUNITY.—

6 The term “environmental justice community” means

7 a community with significant representation of com-

8 munities of color, low income communities, or Tribal

9 and indigenous communities, that experiences, or is

10 at risk of experiencing, higher or more adverse

11 human health or environmental effects.

12 (6) INSTITUTION OF HIGHER EDUCATION.—The

13 term “institution of higher education” has the

14 meaning given the term in section 101 of the Higher

15 Education Act of 1965 (20 U.S.C. 1001).

16 (7) LOCAL EDUCATIONAL AGENCY.—The term

17 “local educational agency” has the meaning given

18 the term in section 8101 of the Elementary and Sec-

19 ondary Education Act of 1965 (20 U.S.C. 7801).

20 (8) LOW INCOME.—The term “low income”,

21 with respect to a household, means an annual house-

22 hold income equal to, or less than, the greater of—

23 (A) 80 percent of the median income of the

24 area in which the household is located, as re-

1 ported by the Department of Housing and
2 Urban Development; and

3 (B) 200 percent of the Federal poverty
4 line.

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

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

13 (11) SECRETARY.—The term “Secretary”
14 means the Secretary of Energy.

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

18 (13) STATE ENERGY PROGRAM.—The term
19 “State Energy Program” means the State Energy
20 Program established under part D of title III of the
21 Energy Policy and Conservation Act (42 U.S.C.
22 6321 et seq.).

23 (14) TRIBAL ORGANIZATION.—

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

4 (B) TECHNICAL AMENDMENT.—Section
5 3765(4) of title 38, United States Code, is
6 amended by striking “section 4(l) of the Indian
7 Self-Determination and Education Assistance
8 Act (25 U.S.C. 450b(l))” and inserting “section
9 4 of the Indian Self-Determination and Edu-
10 cation Assistance Act (25 U.S.C. 5304)”.

11 (b) STATE PROGRAMS.—

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

18 (2) USE OF FUNDS.—

19 (A) IN GENERAL.—Subject to subpara-
20 graph (B), grant funds under paragraph (1)
21 may be used for technical assistance, project fa-
22 cilitation, and administration.

23 (B) TECHNICAL ASSISTANCE.—A State
24 may use not more than 10 percent of grant
25 funds received under paragraph (1) to provide

1 technical assistance for the development, facili-
2 tation, management, oversight, and measure-
3 ment of results of covered projects implemented
4 using those funds.

5 (C) ENVIRONMENTAL JUSTICE AND OTHER
6 COMMUNITIES.—To support communities ad-
7 versely impacted by the COVID–19 pandemic, a
8 State shall use not less than 40 percent of
9 grant funds received under paragraph (1) to
10 implement covered projects in environmental
11 justice communities or low income communities.

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

14 (i) to the extent practicable, leverage
15 private financing for cost-effective energy
16 efficiency, renewable energy, resiliency, and
17 other smart-building improvements, such
18 as by entering into an energy service per-
19 formance contract; but

20 (ii) maintain the use of grant funds to
21 carry out covered projects with more
22 project resiliency, public health, and cap-
23 ital-intensive efficiency and emission reduc-
24 tion components than are typically avail-

1 able through private energy service per-
2 formance contracts.

3 (E) GUIDANCE.—In carrying out a covered
4 project using grant funds received under para-
5 graph (1), a State shall, to the extent prac-
6 ticable, adhere to guidance developed by the
7 Secretary pursuant to the American Recovery
8 and Reinvestment Act of 2009 (Public Law
9 111–5; 123 Stat. 115) relating to distribution
10 of funds, if that guidance will speed the dis-
11 tribution of funds under this subsection.

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

16 (4) REPORT.—Not later than 1 year after the
17 date on which grants are distributed under para-
18 graph (1), and each year thereafter until the funds
19 appropriated pursuant to paragraph (5) are no
20 longer available, the Secretary shall submit a report
21 on the use of those funds (including in the commu-
22 nities described in paragraph (2)(C)) to—

23 (A) the Subcommittee on Energy and
24 Water Development of the Committee on Ap-
25 propriations of the Senate;

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

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

7 (D) the Committee on Energy and Com-
8 merce of the House of Representatives.

9 (5) FUNDING.—In addition to any amounts
10 made available to the Secretary to carry out the
11 State Energy Program, there is authorized to be ap-
12 propriated to the Secretary \$18,000,000,000 to
13 carry out this subsection, to remain available until
14 September 30, 2025.

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

22 (c) FEDERAL ENERGY MANAGEMENT PROGRAM.—

23 (1) IN GENERAL.—Beginning 60 days after the
24 date of enactment of this Act, the Secretary shall
25 use funds appropriated pursuant to paragraph (4) to

1 provide grants under the AFFECT program under
2 the Federal Energy Management Program of the
3 Department of Energy to implement covered
4 projects.

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

7 (A) to the extent practicable, leverage pri-
8 vate financing for cost-effective energy effi-
9 ciency, renewable energy, resiliency, and other
10 smart-building improvements, such as by enter-
11 ing into an energy service performance contract;
12 but

13 (B) maintain the use of grant funds to
14 carry out covered projects with more project re-
15 siliency, public health, and capital-intensive effi-
16 ciency and emission reduction components than
17 are typically available through private energy
18 service performance contracts.

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

1 (A) the Subcommittee on Energy and
2 Water Development of the Committee on Ap-
3 propriations of the Senate;

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

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

10 (D) the Committee on Energy and Com-
11 merce of the House of Representatives.

12 (4) FUNDING.—In addition to any amounts
13 made available to the Secretary to carry out the AF-
14 FECT program described in paragraph (1), there is
15 authorized to be appropriated to the Secretary
16 \$500,000,000 to carry out this subsection, to remain
17 available until September 30, 2025.

18 (d) TRIBAL ORGANIZATIONS.—

19 (1) IN GENERAL.—Not later than 60 days after
20 the date of enactment of this Act, the Secretary, act-
21 ing through the head of the Office of Indian Energy,
22 shall distribute funds made available under para-
23 graph (3) to tribal organizations to implement cov-
24 ered projects.

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

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

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

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

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

18 (3) FUNDING.—There is authorized to be ap-
19 propriated to the Secretary \$1,500,000,000 to carry
20 out this subsection, to remain available until Sep-
21 tember 30, 2025.

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

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), none of the funds made available by or

1 pursuant to this section may be used for a covered
2 project unless all of the iron, steel, and manufac-
3 tured goods used in the project are produced in the
4 United States.

5 (2) EXCEPTIONS.—The requirement under
6 paragraph (1) shall be waived by the head of the rel-
7 evant Federal department or agency in any case or
8 category of cases in which the head of the relevant
9 Federal department or agency determines that—

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

12 (B) the iron, steel, and manufactured
13 goods needed for the project are not produced
14 in the United States—

15 (i) in sufficient and reasonably avail-
16 able quantities; and

17 (ii) in a satisfactory quality; or

18 (C) the inclusion of iron, steel, and rel-
19 evant manufactured goods produced in the
20 United States would increase the overall cost of
21 the project by more than 25 percent.

22 (3) WAIVER PUBLICATION.—If the head of a
23 Federal department or agency makes a determina-
24 tion under paragraph (2) to waive the requirement
25 under paragraph (1), the head of the Federal de-

1 partment or agency shall publish in the Federal
2 Register a detailed justification for the waiver.

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

7 (f) WAGE RATE REQUIREMENTS.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, all laborers and mechanics em-
10 ployed by contractors and subcontractors on projects
11 funded directly or assisted in whole or in part by the
12 Federal Government pursuant to this section shall
13 be paid wages at rates not less than those prevailing
14 on projects of a similar character in the locality, as
15 determined by the Secretary of Labor in accordance
16 with subchapter IV of chapter 31 of title 40, United
17 States Code (commonly known as the “Davis-Bacon
18 Act”).

19 (2) AUTHORITY.—With respect to the labor
20 standards specified in paragraph (1), the Secretary
21 of Labor shall have the authority and functions set
22 forth in Reorganization Plan Numbered 14 of 1950
23 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of
24 title 40, United States Code.

1 **SEC. 33503. PERSONNEL.**

2 (a) IN GENERAL.—To carry out section 33502, the
3 Secretary shall hire within the Department of Energy—

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

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

8 (A) the Office of General Counsel;

9 (B) the Office of Procurement Policy;

10 (C) the Golden Field Office;

11 (D) the National Energy Technology Lab-
12 oratory; and

13 (E) the Office of the Inspector General;

14 and

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

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

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

20 (2) certify that the Secretary is unable to hire
21 all personnel by the date required under this sub-
22 section.

23 (c) CONTRACT HIRES.—

24 (1) IN GENERAL.—If the Secretary makes a
25 certification under subsection (b)(2), the Secretary
26 may hire on a contract basis not more than 50 per-

1 cent of the personnel required to be hired under sub-
2 section (a).

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

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

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

14 (1) the Subcommittee on Energy and Water
15 Development of the Committee on Appropriations of
16 the Senate;

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

20 (3) the Committee on Energy and Natural Re-
21 sources of the Senate; and

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

