

115TH CONGRESS
1ST SESSION

S. 1687

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.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2017

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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

7 (3) PROGRAM MANAGER.—The term “program
8 manager” means a qualified entity that receives a
9 grant under section 3(a).

10 (4) PROJECT.—The term “project” means an
11 energy efficiency improvement project carried out by
12 a small- or medium-sized manufacturer using grant
13 funds distributed by a project manager.

14 (5) QUALIFIED ENTITY.—The term “qualified
15 entity” means—

16 (A) a State energy office;

17 (B) a nonprofit organization that—

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

20 (ii) receives funding from a State,
21 Tribe, or utility;

22 (C) an electric cooperative group; and

23 (D) an entity with a public-private part-
24 nership under the Hollings Manufacturing Ex-
25 tension Partnership established under section

1 25(b) of the National Institute of Standards
2 and Technology Act (15 U.S.C. 278k(b)).

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Energy.

5 (7) SMALL- OR MEDIUM-SIZED MANUFAC-
6 TURER.—The term “small- or medium-sized manu-
7 facturer” means a manufacturing establishment—

8 (A) classified in Sector 31, 32, or 33 in the
9 North American Industry Classification System;
10 and

11 (B) that employs not more than 750 em-
12 ployees.

13 **SEC. 3. FINANCING ENERGY EFFICIENT MANUFACTURING**
14 **PROGRAM.**

15 (a) ESTABLISHMENT.—The Secretary shall establish
16 a program, to be known as the “Financing Energy Effi-
17 cient Manufacturing Program” to provide grants to quali-
18 fied entities to fund energy efficiency improvement
19 projects in the manufacturing sector.

20 (b) GRANT APPLICATIONS; SELECTION OF GRANT
21 RECIPIENTS.—

22 (1) GRANT APPLICATIONS.—

23 (A) IN GENERAL.—Not later than 180
24 days after the date of enactment of this Act,
25 qualified entities desiring a grant under sub-

1 section (a) shall submit to the Secretary an ap-
2 plication in such manner and containing such
3 information as the Secretary may require, in-
4 cluding a description of—

5 (i) how the qualified entity will work
6 with small- and medium-sized manufactur-
7 ers to assess the most promising opportu-
8 nities for energy efficiency improvements;

9 (ii) how the qualified entity will work
10 with small- and medium-sized manufactur-
11 ers and, if appropriate, licensed engineers
12 to establish an energy management plan
13 for the small- or medium-sized manufac-
14 turer to carry out a project;

15 (iii) the methods and cost-sharing
16 plans the qualified entity will use to dis-
17 tribute funds to small- and medium-sized
18 manufacturers to subsidize the costs of
19 carrying out a project;

20 (iv) the standards by which the quali-
21 fied entity will set energy efficiency goals
22 for a project that will result in meaningful
23 reductions in electricity or natural gas use
24 by the small- or medium-sized manufac-
25 turer carrying out the project;

1 (v) how the qualified entity will pro-
2 vide support to the small- or medium-sized
3 manufacturer carrying out a project during
4 the implementation of the energy manage-
5 ment plan;

6 (vi)(I) any history of the qualified en-
7 tity of working collaboratively with the re-
8 gional technical assistance programs of the
9 Department of Energy; and

10 (II) how the qualified entity plans to
11 involve the regional technical assistance
12 programs in the activities to be funded by
13 a grant; and

14 (vii) how the qualified entity will col-
15 lect measurements throughout the imple-
16 mentation of the energy management
17 plan—

18 (I) to demonstrate how energy ef-
19 ficiency improvements are being
20 achieved; and

21 (II) to maximize opportunities
22 for project success.

23 (B) PARTNERSHIPS.—Two or more quali-
24 fied entities may form a partnership to apply,

1 and act as program manager, for a grant under
2 this subsection.

3 (2) SELECTION OF GRANT RECIPIENTS.—

4 (A) IN GENERAL.—Not later than 90 days
5 after the date on which the Secretary receives
6 an application under paragraph (1), the Sec-
7 retary shall—

8 (i) review the application;

9 (ii) provide the applicant with an op-
10 portunity to respond to any questions of
11 the Secretary regarding the application;
12 and

13 (iii) select or deny the applicant based
14 on the criteria described in subparagraph
15 (B).

16 (B) SELECTION CRITERIA.—

17 (i) IN GENERAL.—The Secretary shall
18 select for grants under this subsection
19 qualified entities that demonstrate a his-
20 tory of successfully implementing energy
21 efficiency improvement programs for small-
22 and medium-sized manufacturers.

23 (ii) PRIORITY.—In making selections
24 under clause (i), the Secretary shall give

1 priority to qualified entities that dem-
2 onstrate—

3 (I) effective methods for reducing
4 barriers to entry that might otherwise
5 prevent small- and medium-sized man-
6 ufacturers from participating in the
7 subgrant program under subsection
8 (c);

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

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

16 (c) SUBGRANTS FOR ENERGY EFFICIENCY IMPROVE-
17 MENTS.—

18 (1) IN GENERAL.—A qualified entity (including
19 a partnership of one or more qualified entities under
20 subsection (b)(1)(B)) that receives a grant under
21 subsection (a) shall act as a program manager to
22 distribute subgrants to small- and medium-sized
23 manufacturers located in the State in which the pro-
24 gram manager is located to carry out projects—

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

3 (B) to develop technologies to reduce elec-
4 tricity or natural gas use by the small- or me-
5 dium-sized manufacturer.

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

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

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

24 (5) ENERGY MANAGEMENT PLANS.—Each
25 small- or medium-sized manufacturer receiving a

1 subgrant under paragraph (1), in consultation with
2 the program manager and, if appropriate, one or
3 more licensed engineers, shall establish an energy
4 management plan for the small- or medium-sized
5 manufacturer to carry out the project.

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

11 (d) CONTRACTORS.—

12 (1) IN GENERAL.—Program managers and
13 small- or medium-sized manufacturers may hire, if
14 necessary, contractors to perform work relating to
15 the installation, repair, or maintenance of equipment
16 used under a project.

17 (2) LABOR REQUIREMENTS.—In an application
18 for a grant or subgrant under this section, a pro-
19 gram manager or a small- or medium-sized manu-
20 facturer, respectively, may commit to hiring contrac-
21 tors that represent to the best of the knowledge and
22 belief of the contractor, whether, during the 3-year
23 period preceding the date of application, any admin-
24 istrative merits determination, arbitral award or de-
25 cision, or civil judgment (as defined in guidance

1 issued by the Secretary of Labor) was rendered
2 against the contractor for violations of—

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

5 (B) the Fair Labor Standards Act of 1938
6 (29 U.S.C. 201 et seq.);

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

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

11 (E) the Migrant and Seasonal Agricultural
12 Worker Protection Act (29 U.S.C. 1801 et
13 seq.);

14 (F) the Family and Medical Leave Act of
15 1993 (29 U.S.C. 2611 et seq.);

16 (G) subchapter IV of chapter 31 of part A
17 of subtitle II of title 40, United States Code
18 (commonly referred to as the “Davis-Bacon
19 Act”);

20 (H) chapter 67 of title 41, United States
21 Code;

22 (I) title VII of the Civil Rights Act of 1964
23 (42 U.S.C. 2000e et seq.);

24 (J) the Americans with Disabilities Act of
25 1990 (42 U.S.C. 12101 et seq.);

1 (K) Executive Order 11246 (42 U.S.C.
2 2000e note) (relating to equal employment op-
3 portunity);

4 (L) Executive Order 13658 (79 Fed. Reg.
5 9851 (February 20, 2014)) (relating to estab-
6 lishing a minimum wage for contractors); or

7 (M) equivalent State laws.

8 (3) ADDITIONAL LABOR REQUIREMENTS.—A
9 program manager or small- or medium-sized manu-
10 facturer receiving a grant or subgrant, respectively,
11 under this section that has committed to complying
12 with the labor requirements described in paragraph
13 (2)—

14 (A) shall provide each contractor an oppor-
15 tunity to disclose any steps taken to correct a
16 violation of, or improve compliance with, a law
17 or Executive order described in any of subpara-
18 graphs (A) through (M) of paragraph (2), in-
19 cluding any agreements entered into with an
20 enforcement agency;

21 (B) shall give preference to contractors
22 that have the fewest number of violations (par-
23 ticularly serious, repeated, willful, or pervasive
24 violations) of the laws and Executive orders de-

1 scribed in subparagraphs (A) through (M) of
2 paragraph (2); and

3 (C) shall not hire contractors that fail to
4 take steps to correct violations of, or improve
5 compliance with, a law or Executive order de-
6 scribed in any of subparagraphs (A) through
7 (M) of paragraph (2).

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

10 (1) DEFINITIONS.—In this subsection:

11 (A) IRON OR STEEL MANUFACTURED
12 PRODUCT.—The term “iron or steel manufac-
13 tured product” includes any construction mate-
14 rial or end product (as those terms are defined
15 in subpart 25.003 of the Federal Acquisition
16 Regulation) that does not otherwise qualify as
17 an iron or steel product, including—

18 (i) an electrical component;

19 (ii) a non-ferrous building material,
20 including—

21 (I) aluminum and
22 polyvinylchloride;

23 (II) glass;

24 (III) fiber optics;

25 (IV) plastic;

- 1 (V) wood;
2 (VI) masonry;
3 (VII) rubber;
4 (VIII) manufactured stone; and
5 (IX) any other non-ferrous build-
6 ing materials; and
7 (iii) any unmanufactured construction
8 material.

9 (B) PRODUCED IN THE UNITED STATES.—

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

12 (I) with respect to an iron or
13 steel product or an iron or steel man-
14 ufactured product, means that all
15 manufacturing processes for, and ma-
16 terials and components of, the iron or
17 steel product or iron or steel manufac-
18 tured product, from the initial melting
19 stage through the application of coat-
20 ings, occurred in the United States;
21 and

22 (II) with respect to an iron or
23 steel manufactured product, means
24 that—

1 (aa) the iron or steel manu-
2 factured product was manufac-
3 tured in the United States; and

4 (bb) the cost of the compo-
5 nents of the iron or steel manu-
6 factured product that were
7 mined, produced, or manufac-
8 tured in the United States is
9 greater than 60 percent of the
10 total cost of the components of
11 the iron or steel manufactured
12 product.

13 (ii) EXCLUSIONS.—The term “pro-
14 duced in the United States”, with respect
15 to an iron or steel product or an iron or
16 steel manufactured product, does not in-
17 clude an iron or steel product or an iron
18 or steel manufactured product that was
19 manufactured—

20 (I) abroad from semi-finished
21 steel or iron from the United States;
22 or

23 (II) in the United States from
24 semi-finished steel or iron of foreign
25 origin.

1 (2) REQUIREMENT.—Funds made available
2 under the program may not be used for a project
3 unless all of the iron and steel products and iron
4 and steel manufactured products used in the project
5 are produced in the United States.

6 (3) WAIVER.—

7 (A) IN GENERAL.—On request of the re-
8 cipient of a grant under the program, the Sec-
9 retary may grant for the project of the recipient
10 of the grant a waiver of the requirement de-
11 scribed in paragraph (2) if the Secretary finds
12 that—

13 (i) the application of paragraph (2)
14 would be inconsistent with the public inter-
15 est;

16 (ii) iron or steel products or iron or
17 steel manufactured products are not pro-
18 duced in the United States—

19 (I) in sufficient and reasonably
20 available quantities; or

21 (II) of a satisfactory quality; or

22 (iii) the inclusion of iron or steel prod-
23 ucts or iron or steel manufactured prod-
24 ucts produced in the United States would

1 increase the cost of the overall project by
2 greater than 25 percent.

3 (B) PUBLIC NOTICE.—On receipt of a re-
4 quest for a waiver under subparagraph (A), the
5 Secretary shall—

6 (i) make available to the public, in-
7 cluding by electronic means, including on
8 the official public website of the Depart-
9 ment of Energy, on an informal basis, a
10 copy of the request and all information
11 available to the Secretary relating to the
12 request; and

13 (ii) provide for informal public input
14 on the request for a period of not fewer
15 than 15 days before making with respect
16 to the request the finding described in sub-
17 paragraph (A).

18 (f) REPORTING REQUIREMENTS.—

19 (1) IN GENERAL.—Each program manager
20 shall—

21 (A) determine what data shall be re-
22 quired—

23 (i) to be collected by or from each
24 small- or medium-sized manufacturer re-

1 ceiving a subgrant under subsection (c);
2 and

3 (ii) to be submitted to the program
4 manager to permit analysis of the subgrant
5 program under subsection (c); and

6 (B) develop metrics to determine the suc-
7 cess of the subgrant program under subsection
8 (c).

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

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

18 (g) FUNDING.—

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

23 (2) REQUIREMENTS FOR PROGRAM MAN-
24 AGERS.—A program manager shall use not greater
25 than 7 percent of the grant funds received by the

1 program manager, at the discretion of the program
2 manager—

3 (A) to hire and train staff to assist the
4 program manager in administering the
5 subgrant program of the program manager; and

6 (B) to market the subgrant program to
7 small- and medium-sized manufacturers.

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

○