

115TH CONGRESS  
2D SESSION

# S. 3601

To amend the Workforce Innovation and Opportunity Act to provide for a program that employs pay-for-performance financing for workforce development projects.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 2018

Mr. BOOKER (for himself and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Workforce Innovation and Opportunity Act to provide for a program that employs pay-for-performance financing for workforce development projects.

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 “Delivering Outcomes  
5 for American Workers Act”.

6 **SEC. 2. PAY-FOR-PERFORMANCE WORKFORCE DEVELOP-**  
7 **MENT PROGRAM.**

8 Subtitle D of title I of the Workforce Innovation and  
9 Opportunity Act (29 U.S.C. 3221 et seq.) is amended—

1 (1) by redesignating section 172 as section 173;

2 and

3 (2) by inserting after section 171 the following:

4 **“SEC. 172. PAY-FOR-PERFORMANCE WORKFORCE DEVELOP-**  
5 **MENT PROGRAM.**

6 “(a) GENERAL AUTHORITY.—The Secretary shall es-  
7 tablish and carry out a Pay-for-Performance workforce de-  
8 velopment program. In carrying out the program, the Sec-  
9 retary may enter into agreements with eligible entities to  
10 provide for workforce development projects that are de-  
11 signed to accomplish outcomes that, in turn, enable the  
12 eligible entities to achieve specified long-term employment-  
13 related goals.

14 “(b) LONG-TERM EMPLOYMENT-RELATED GOALS.—  
15 Not less often than annually, the Secretary shall issue  
16 guidance that specifies long-term employment-related  
17 goals, such as sustained long-term employment or in-  
18 creased earnings over time, for projects carried out under  
19 this section. The guidance shall specify long-term employ-  
20 ment-related goals that an eligible entity shall address in  
21 an application for a project to be carried out in the upcom-  
22 ing fiscal year.

23 “(c) ELIGIBLE ENTITIES.—To be eligible to enter  
24 into an agreement under this section, an entity shall be  
25 a State, a political subdivision of a State, a State board,

1 a local board, an Indian tribe or tribal organization (as  
2 such terms are defined in section 166(b)), or a partnership  
3 of entities described in this subsection.

4 “(d) APPLICATIONS.—To be eligible to enter into an  
5 agreement under this section, an entity shall submit an  
6 application to the Secretary at such time, in such manner,  
7 and containing such information as the Secretary may re-  
8 quire, including—

9 “(1) a description of a potential workforce de-  
10 velopment approach that the entity proposes to carry  
11 out by entering into a contract with one or more  
12 service providers for a workforce development  
13 project, in accordance with an outcomes rate card  
14 described in subsection (e)(1) and approved as part  
15 of the application;

16 “(2) a description of the geographic area and  
17 target population that the entity intends to serve  
18 through the project, along with a data-driven ration-  
19 ale for the size and expected impact of the project;

20 “(3) a description of expected participant- and  
21 community-level social benefits as a result of the  
22 project;

23 “(4) the outcomes rate card described in sub-  
24 section (e)(1) and an assurance that the entity will

1 incorporate the terms specified on the card into the  
2 contracts with service providers;

3 “(5) evidence, including the results of prior rig-  
4 orous experimental or quasi-experimental studies,  
5 demonstrating that the outcomes specified on the  
6 outcomes rate card predict whether the long-term  
7 employment-related goals will be achieved;

8 “(6) an assurance that the entity will contribute  
9 the non-program share described in subsection (g) of  
10 the cost of each project involved;

11 “(7) an assurance that the entity will hold an  
12 open and fair procurement process to select service  
13 providers to provide services under the project;

14 “(8) a commitment that the entity will ensure  
15 that service delivery is not skewed toward the par-  
16 ticipants most likely to achieve the desired outcomes;

17 “(9) an assurance that necessary administrative  
18 data systems and information technology infrastruc-  
19 ture are available or will be available to connect the  
20 data and information from a service provider with  
21 outcomes validation and performance management  
22 and payment processes; and

23 “(10) a plan for evaluation of the project as de-  
24 scribed in subsection (j)(1).

25 “(e) OUTCOMES.—

1           “(1) CARD PREPARED BY ELIGIBLE ENTITY.—

2           To be eligible to enter into an agreement under this  
3           section, an entity shall prepare an outcomes rate  
4           card that specifies each of the following and any ad-  
5           ditional information requested by the Secretary:

6                   “(A) The long-term employment-related  
7                   goals the eligible entity hopes to achieve.

8                   “(B) The specific outcomes that the eligi-  
9                   ble entity hopes to achieve, which will be used  
10                  to assess whether long-term employment-related  
11                  goals are achieved.

12                  “(C) The price for each such outcome, that  
13                  the eligible entity proposes that the Secretary  
14                  will pay to reimburse an eligible entity for each  
15                  participant that achieves the outcome, con-  
16                  sistent with paragraph (2)(B).

17                  “(D) Other terms that the eligible entity  
18                  proposes to incorporate into each contract with  
19                  a service provider.

20           “(2) GUIDANCE PREPARED BY SECRETARY.—

21           Not less often than annually, the Secretary shall  
22           issue guidance, on which eligible entities may base  
23           outcomes rate cards prepared under paragraph (1).  
24           The guidance shall include information describing  
25           sample outcomes and factors for entities to consider

1 when proposing their prices, including the type of  
2 population being served. The guidance shall describe  
3 the harder-to-serve populations for which entities  
4 may propose higher prices.

5 “(f) AWARDING AGREEMENTS.—

6 “(1) TIMELINE IN AWARDING AGREEMENT.—

7 Not later than 6 months after receiving an applica-  
8 tion, the Secretary shall determine whether to enter  
9 into an agreement for a workforce development  
10 project with an eligible entity.

11 “(2) PRIORITY POPULATIONS.—In selecting eli-

12 gible entities for agreements, the Secretary shall give  
13 priority to entities who propose to serve veterans  
14 and individuals with barriers to employment, includ-  
15 ing homeless individuals and long-term unemployed  
16 individuals.

17 “(3) AGREEMENT AUTHORITY.—

18 “(A) AGREEMENT REQUIREMENTS.—The

19 Secretary may enter into an agreement for a  
20 workforce development project if the Secretary  
21 approves the application and determines that  
22 each of the following requirements are met:

23 “(i) OUTCOME AND REIMBURSE-

24 MENT.—The eligible entity agrees to de-

25 velop and implement (through contracts

1 with service providers) a workforce devel-  
2 opment project—

3 “(I) that is designed to achieve  
4 specified long-term employment-re-  
5 lated goals; and

6 “(II) for which the Secretary will  
7 reimburse the eligible entity for a pro-  
8 gram share of the cost of the project,  
9 subject to subparagraph (B).

10 “(ii) OUTCOME THAT PREDICTS  
11 ACHIEVEMENT.—Based on information  
12 provided in the application submitted  
13 under subsection (d) or other relevant in-  
14 formation, particularly the results of prior  
15 rigorous experimental or quasi-experi-  
16 mental studies, the proposed outcomes pre-  
17 dict whether the long-term employment-re-  
18 lated goals will be achieved.

19 “(B) MAXIMUM REIMBURSEMENT.—The  
20 Secretary may enter into an agreement with a  
21 target reimbursement amount (for the total re-  
22 imbursement expected to be provided under the  
23 agreement for the project involved) of not more  
24 than \$20,000,000, except that the maximum re-

1 imbursement to be provided under such an  
2 agreement—

3 “(i) subject to clause (ii), will be de-  
4 termined in accordance with the outcomes  
5 rate card described in subsection (e)(1)  
6 and included in the agreement; and

7 “(ii) will not exceed the amount of the  
8 program share of the cost described in sub-  
9 section (d)(6).

10 “(g) PROGRAM SHARE.—

11 “(1) IN GENERAL.—The program share of the  
12 cost described in subsection (d)(6) shall be not more  
13 than 75 percent.

14 “(2) NON-PROGRAM SHARE.—An eligible entity  
15 shall contribute the non-program share of the cost—

16 “(A) in cash; and

17 “(B) from public or private sources, in-  
18 cluding Federal sources other than the program  
19 carried out under this section.

20 “(3) FEDERAL SOURCES.—Funds that are ap-  
21 propriated to carry out this section, or appropriated  
22 under Federal law and designated for use under  
23 paragraph (2)(B), shall remain available until ex-  
24 pended.



1       “(h) TECHNICAL ASSISTANCE.—The Secretary shall  
2 reserve not more than \$10,000,000 to provide technical  
3 assistance to aid entities described in subsection (c) in de-  
4 veloping outcomes rate cards under subsection (e)(1) and  
5 refining the data systems described in subsection (d)(9).

6       “(i) DATA SHARING.—The Secretary shall ensure  
7 that the eligible entities that enter into agreements under  
8 this section have appropriate data sharing agreements in  
9 place, to enable the eligible entities to access administra-  
10 tive data needed to measure the outcomes, and to measure  
11 the long-term employment-related goals.

12       “(j) EVALUATIONS.—

13               “(1) PROJECTS.—The Secretary shall conduct  
14 an evaluation of each workforce development project  
15 carried out under this section, using reliable, evi-  
16 dence-based research methodologies (including if  
17 possible contemporaneous use of a comparison  
18 group) that allow for the strongest possible causal  
19 inferences for the project—

20                       “(A) to determine whether the project car-  
21 ried out in accordance with the related outcome  
22 rate card yielded the desired long-term employ-  
23 ment-related goals;

24                       “(B) to determine if the outcomes were ac-  
25 curate predictors of whether the corresponding

1 long-term employment-related goals were  
2 achieved;

3 “(C) to assess the implementation of the  
4 project and its impact on—

5 “(i) employment, including private  
6 sector employment;

7 “(ii) wages and benefits in private  
8 sector employment; and

9 “(iii) poverty; and

10 “(D) to develop best practices for work-  
11 force development projects.

12 “(2) PROGRAM.—The Secretary shall conduct  
13 an evaluation of the Pay-for-Performance workforce  
14 development program carried out under this sec-  
15 tion—

16 “(A) using the methodologies described in  
17 paragraph (1);

18 “(B) making the determinations and as-  
19 sessment required in subparagraphs (A)  
20 through (C) of paragraph (1) for that program;  
21 and

22 “(C) developing best practices for pay-for-  
23 performance workforce development programs.

24 “(3) RESERVATION.—The Secretary shall re-  
25 serve, for each fiscal year in which a project or pro-

1       gram is to be evaluated under this subsection, not  
2       less than \$5,000,000 to carry out this subsection.

3       “(k) WEBSITE.—The Secretary shall establish and  
4       maintain a web page on which the Secretary shall make  
5       publicly available—

6               “(1) a copy of, or method of accessing, each no-  
7       tice published in the Federal Register regarding a  
8       project to be funded pursuant to this section; and

9               “(2) for each eligible entity that has entered  
10       into an agreement with the Secretary for such a  
11       project, information stating—

12               “(A) the long-term employment-related  
13       goals and outcome rate cards for the project;

14               “(B) a description of each workforce devel-  
15       opment approach and service provider to be  
16       used in the project;

17               “(C) the target population that will be  
18       served by the project;

19               “(D) the expected social benefits to partici-  
20       pants in the project and others who may be im-  
21       pacted;

22               “(E) the information included in the out-  
23       comes rate card and the methodology to be used  
24       to determine if the participants achieve the out-  
25       comes;

1 “(F) the project timeline; and

2 “(G) the maximum reimbursement possible  
3 for the project.

4 “(I) REGULATIONS.—The Secretary may issue regu-  
5 lations as necessary to carry out this section.”.

6 **SEC. 3. FUNDING.**

7 Section 173 of the Workforce Innovation and Oppor-  
8 tunity Act, as redesignated by section 2(1), is amended—

9 (1) by redesignating subsections (e) and (f) as  
10 subsections (f) and (g), respectively; and

11 (2) by inserting after subsection (d) the fol-  
12 lowing:

13 “(e) PAY-FOR-PERFORMANCE WORKFORCE DEVEL-  
14 OPMENT PROGRAM.—To carry out section 172—

15 “(1) funds available under section 286(s)(2)(A)  
16 of the Immigration and Nationality Act (8 U.S.C.  
17 1356(s)(2)(A)) may be used; and

18 “(2) there are authorized to be appropriated  
19 such sums as may be necessary for fiscal year 2019,  
20 and sums appropriated under this paragraph shall  
21 remain available until 5 years after the date of en-  
22 actment of the Delivering Outcomes for American  
23 Workers Act.”.

1 **SEC. 4. CONFORMING AMENDMENTS.**

2 (a) IMMIGRATION AND NATIONALITY ACT.—Section  
3 286(s)(2) of the Immigration and Nationality Act (8  
4 U.S.C. 1356(s)(2)) is amended by striking “(2)” and all  
5 that follows through “50 percent of amounts” and insert-  
6 ing the following:

7 “(2) USE OF FEES.—

8 “(A) PAY-FOR-PERFORMANCE WORKFORCE  
9 DEVELOPMENT PROGRAM.—From a portion  
10 equal to 50 percent of the amounts deposited  
11 into the H–1B Nonimmigrant Petitioner Ac-  
12 count for a fiscal year, the greater of  
13 \$100,000,000, or all of the portion, shall re-  
14 main available to the Secretary of Labor until  
15 expended to carry out the section 172 of the  
16 Workforce Innovation and Opportunity Act.

17 “(B) JOB TRAINING.—The remainder of  
18 the portion”.

19 (b) TABLE OF CONTENTS.—The table of contents in  
20 section 1(b) of the Workforce Innovation and Opportunity  
21 Act is amended—

22 (1) by redesignating the item relating to section  
23 172 as the item relating to section 173; and

24 (2) by inserting after the item relating to sec-  
25 tion 171 the following:

“Sec. 172. Pay-for-Performance workforce development program.”.

1 **SEC. 5. PROSPECTIVE REPEAL OF AUTHORITY.**

2 (a) REPEAL.—Effective 5 years after the date of en-  
3 actment of this Act—

4 (1) section 172 of the Workforce Innovation  
5 and Opportunity Act, as added by section 2 of this  
6 Act, is repealed;

7 (2) the Workforce Innovation and Opportunity  
8 Act (29 U.S.C. 3101 et seq.), as amended by sec-  
9 tions 3 and 4 of this Act, is amended—

10 (A) in the table of contents, by striking the  
11 item relating to section 172; and

12 (B) in section 173, by striking subsection  
13 (e); and

14 (3) section 286(s)(2) of the Immigration and  
15 Nationality Act (8 U.S.C. 1356(s)(2)), as amended  
16 by section 4 of this Act, is amended—

17 (A) by striking subparagraph (A); and

18 (B) in subparagraph (B), by striking  
19 “(B)” and all that follows through “of the por-  
20 tion” and inserting “50 percent of amounts”.

21 (b) AGREEMENTS STILL IN EFFECT.—Notwith-  
22 standing the amendments made by subsection (a), an  
23 agreement entered into under section 172(a) of the Work-  
24 force Innovation and Opportunity Act before the effective  
25 date of the amendments made by subsection (a) shall re-

- 1 main in full force and effect under the terms, and for the
- 2 duration, of the agreement.

