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1st Session }

SENATE

{ REPORT
116-137

ENHANCING STATE ENERGY SECURITY PLANNING AND EMERGENCY PREPAREDNESS ACT OF 2019

OCTOBER 22, 2019.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany H.R. 2114]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (H.R. 2114) to amend the Energy Policy and Conservation Act to provide Federal financial assistance to States to implement, review, and revise State energy security plans, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Enhancing State Energy Security Planning and Emergency Preparedness Act of 2019”.

SEC. 2. STATE ENERGY SECURITY PLANS.

(a) IN GENERAL.—Part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) is amended by adding at the end the following:

“SEC. 367. STATE ENERGY SECURITY PLANS.

“(a) IN GENERAL.—Federal financial assistance made available to a State under this part may be used for the implementation, review, and revision of a State energy security plan that assesses the State’s existing circumstances and proposes methods to strengthen the ability of the State, in consultation with owners and operators of energy infrastructure in such State, to—

“(1) secure the energy infrastructure of the State against all physical and cybersecurity threats;

- “(2) mitigate the risk of energy supply disruptions to the State and enhance the response to, and recovery from, energy disruptions; and
- “(3) ensure the State has a reliable, secure, and resilient energy infrastructure.
- “(b) CONTENTS OF PLAN.—A State energy security plan described in subsection (a) shall—
- “(1) address all energy sources and regulated and unregulated energy providers;
- “(2) provide a State energy profile, including an assessment of energy production, distribution, and end-use; ‘
- “(3) address potential hazards to each energy sector or system, including physical threats and cybersecurity threats and vulnerabilities;
- “(4) provide a risk assessment of energy infrastructure and cross-sector interdependencies;
- “(5) provide a risk mitigation approach to enhance reliability and end-use resilience; and
- “(6) address multi-State, Indian Tribe, and regional coordination planning and response, and to the extent practicable, encourage mutual assistance in cyber and physical response plans.
- “(c) COORDINATION.—In developing a State energy security plan under this section, the energy office of the State shall, to the extent practicable, coordinate with—
- “(1) the public utility or service commission of the State;
- “(2) energy providers from the private sector; and
- “(3) other entities responsible for maintaining fuel or electric reliability.
- “(d) FINANCIAL ASSISTANCE.—A State is not eligible to receive Federal financial assistance under this part, for any purpose, for a fiscal year unless the Governor of such State submits to the Secretary, with respect to such fiscal year—
- “(1) a State energy security plan described in subsection (a) that meets the requirements of subsection (b); or
- “(2) after an annual review of the State energy security plan by the Governor—
- “(A) any necessary revisions to such plan; or
- “(B) a certification that no revisions to such plan are necessary.
- “(e) TECHNICAL ASSISTANCE.—Upon request of the Governor of a State, the Secretary may provide information and technical assistance, and other assistance, in the development, implementation, or revision of a State energy security plan.
- “(f) REQUIREMENT.—Each State receiving Federal financial assistance under this part shall provide reasonable assurance to the Secretary that the State has established policies and procedures designed to assure that the financial assistance will be used—
- “(1) to supplement, and not to supplant, State and local funds; and
- “(2) to the maximum extent practicable, to increase the amount of State and local funds that otherwise would be available, in the absence of the financial assistance, for the implementation of the State energy security plan under this section.
- “(g) PROTECTION OF INFORMATION.—Information provided to, or collected by, the Federal Government under this section—
- “(1) shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code; and ‘
- “(2) shall not be made available by any Federal agency, State, political subdivision of a State, or Tribal authority pursuant to any Federal, State, or Tribal law, as applicable, requiring public disclosure of information or records.
- “(h) SUNSET.—This section shall expire on October 31, 2024.”
- (b) AUTHORIZATION OF APPROPRIATIONS.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended—
- (1) by striking “\$125,000,000” and inserting “\$90,000,000”; and
- (2) by striking “2007 through 2012” and inserting “2021 through 2025”.
- (c) TECHNICAL AND CONFORMING AMENDMENTS.—
- (1) CONFORMING AMENDMENTS.—Section 363 of the Energy Policy and Conservation Act (42 U.S.C. 6323) is amended—
- (A) by striking subsection (e); and
- (B) by redesignating subsection (f) as subsection (e).
- (2) TECHNICAL AMENDMENT.—Section 366(3)(B)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6326(3)(B)(i)) is amended by striking “approved under section 367”.
- (3) REFERENCE.—The matter under the heading “ENERGY CONSERVATION” under the heading “DEPARTMENT OF ENERGY” in title II of the Department of the Interior and Related Agencies Appropriations Act, 1985 (42

U.S.C. 6323a) is amended by striking “sections 361 through 366” and inserting “sections 361 through 367”.

(4) TABLE OF CONTENTS.—The table of contents for part D of title III of the Energy Policy and Conservation Act (Public Law 94–163; 89 Stat. 872; 92 Stat. 3272; 104 Stat. 1006) is amended by adding at the end the following:

“SEC. 367. STATE ENERGY SECURITY PLANS.”.

PURPOSE

The purpose of H.R. 2114, as ordered reported, is to amend the Energy Policy and Conservation Act (EPCA, Public Law 94–163, as amended) to provide Federal financial assistance to States to implement, review, and revise State energy security plans.

BACKGROUND AND NEED

The Department of Energy’s (DOE) State Energy Program provides funding and technical assistance to States, Territories, and the District of Columbia to enhance energy planning and security. The program originated as the State Energy Conservation Program, which was first authorized under EPCA. The State Energy Efficiency Programs Improvement Act of 1990 (Public Law 101–440), amended EPCA to require energy emergency planning requirements as a supplement to State energy conservation plans. Energy emergency planning requirements are also referred to as energy assurance programs.

On May 11, 2017, President Trump issued Executive Order No. 13800 on “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.” The Executive Order called for an evaluation of the nation’s ability to manage the consequences of a cybersecurity attack on the electric grid. In response, DOE issued a report on August 9, 2017, which included the analysis required under the Executive Order. In the report, DOE identified a number of gaps in the nation’s ability to recover from cyber incidents. One of the gaps noted by DOE is a lack of cybersecurity incident planning in State energy assurance plans, including plans for long-term power outage scenarios.

This legislation addresses that gap by amending EPCA to authorize the Secretary of Energy to provide financial assistance for State Energy Security Plans. A State Energy Security Plan will assess a State’s existing circumstances and propose methods to strengthen the ability of the State to (1) secure the energy infrastructure of the State against all physical and cybersecurity threats; (2) mitigate the risk of energy supply disruptions to the State and enhance response to, and recovery from, energy disruptions; and (3) ensure the State has a reliable, secure, and resilient energy infrastructure.

LEGISLATIVE HISTORY

H.R. 2114, was introduced in the House of Representatives by Representatives Rush (D–IL) and Upton (R–MI) on April 8, 2019, and passed the House of Representatives by voice vote on September 9, 2019.

Similar legislation, S. 2094, was introduced by Senators Gardner and Bennet on July 11, 2019. The Subcommittee on Energy held a hearing on the measure on September 11, 2019. The Senate Committee on Energy and Natural Resources met in open business ses-

sion on September 25, 2019, and ordered S. 2094 favorably reported, as amended.

In the 115th Congress, Senators Gardner and Bennet introduced similar legislation, S. 3676, on November 29, 2018. The Subcommittee on Energy held a hearing on S. 3676 on November 29, 2018 (S. Hrg. 115–534). Similar legislation, H.R. 3050, was introduced in the House of Representatives by Representatives Upton (R–MI) and Rush (D–IL) on June 23, 2017, and passed the House of Representatives by voice vote on July 18, 2017.

The Senate Committee on Energy and Natural Resources met in open business session on September 25, 2019, and ordered H.R. 2114 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on September 25, 2019, by a majority voice vote of a quorum present, recommends that the Senate pass H.R. 2114, if amended as described herein. Senator Lee asked to be recorded as voting no.

COMMITTEE AMENDMENTS

During its consideration of H.R. 2114, the Committee adopted an amendment in the nature of a substitute.

The Joint Staff Amendment makes several changes to conform the text with S. 2094. Specifically the amendment adds language to protect critical energy infrastructure information from widespread disclosure, and ensures that financial assistance provided to states is used to supplement, and not supplant, existing state funds.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth the short title of the bill.

Sec. 2. State energy security plans

Section 2(a) amends Part D of title III of EPCA by adding a new section 367 titled “State Energy Security Plans.”

New section 367(a) allows the Secretary to provide financial assistance to a State for a State Energy Security Plan (Plan) that assesses the State’s existing circumstances and proposes methods to strengthen the ability of the State to secure infrastructure and minimize supply disruptions,

New section 367(b) describes the required contents of a Plan, which include a State energy profile, potential hazards to the energy sector, and a risk assessment to energy infrastructure.

New section 367(c) provides that in developing a Plan, the energy office of the State shall coordinate with the public utility or service commission of the State, the private sector, and other entities responsible for maintaining fuel or electric reliability.

New section 367(d) provides that a State is not eligible to receive Federal financial assistance for a Plan unless it meets the requirements of this section.

New section 367(e) allows the Secretary, upon the request of the Governor of a State, to provide information and technical assistance to support the development, implementation, or revision of a Plan.

New section 367(f) requires each State to provide assurance that financial assistance provided under this section is used to supplement, and not supplant, existing State funds.

New section 367(g) exempts information provided to or collected by the Federal government under this section from Federal, State, and Tribal public information disclosure laws.

New section 366(h) sunsets the authority for this section on October 31, 2024.

Section 2(b) authorizes to be appropriated \$90 million for each of fiscal years 2021 through 2025 to carry out State energy conservation plans.

Section 2(c) contains technical and conforming amendments.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

H.R. 2114, Enhancing State Energy Security Planning and Emergency Preparedness Act of 2019			
As ordered reported by the Senate Committee on Energy and Natural Resources on September 25, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	212	448
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 2114 would authorize the Department of Energy (DOE) to provide grants to states to implement, review, and revise state energy security plans and would authorize DOE to provide information and technical assistance to states during that process. Under the act, state energy security plans would include assessments of current energy plans and proposed methods to strengthen the physical and cybersecurity of a state's energy infrastructure.

In 2019, DOE allocated \$55 million for a similar grant program. Based on spending patterns for that program and assuming appropriation of the authorized amounts, CBO estimates that imple-

menting H.R. 2114 would cost \$212 million over the 2020–2024 period and \$238 million after 2024.

The costs of the legislation (detailed in Table 1) fall within budget function 270 (energy).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 2114

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020– 2024	2020– 2029	
Authorization	0	90	90	90	90	90	0	0	0	0	360	450	
Estimated Outlays	0	18	45	68	81	87	72	45	23	9	212	448	

On October 18, 2019, CBO transmitted a cost estimate for S. 2094, the Enhancing State Energy Security Planning and Emergency Preparedness Act of 2019, as ordered reported by the Senate Committee on Energy and Natural Resources on September 25, 2019. The two pieces of legislation are similar and CBO’s estimated budgetary effects are the same.

The CBO staff contact for this estimate is Sofia Guo. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2114. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2114, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 2114, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The Committee did not request executive views on H.R. 2114. However, H.R. 2114 is similar to S. 2094, and the testimony provided by the Department of Energy at the September 11, 2019, hearing on S. 2094 is as follows:

TESTIMONY OF UNDER SECRETARY OF ENERGY, MARK W.
MENEZES, U.S. DEPARTMENT OF ENERGY

INTRODUCTION

Chairman Cassidy, Ranking Member Heinrich, and Members of the Subcommittee, it is a privilege and an honor to serve at the Department of Energy (DOE or the

Department), which is tasked with, among other important responsibilities: overseeing the Nation's nuclear energy research and development programs; creating and sustaining American leadership in the transition to a global clean energy economy; working effectively with the States on our Nation's energy challenges; and supporting our current, and developing our Nation's future, energy workforce. Thank you for the opportunity to testify today on behalf of the Department regarding legislation pertinent to DOE that is now pending in the Senate.

I have been asked to testify on nine (9) bills today. The Administration continues to review all of these bills. I appreciate the ongoing bipartisan efforts to address our Nation's energy challenges and I look forward to working with the Committee.

INTERACTIONS WITH THE STATES

DOE has a long and successful history of working with States on the Nation's most significant energy challenges. DOE has provided support for State and local governments to develop and refine energy assurance plans, build in-house expertise on infrastructure interdependencies (i.e., other critical infrastructure systems' reliance on electricity for operations) and vulnerabilities, integrate renewable energy, address challenges associated with premature nuclear power plant retirements and opportunities associated with advanced nuclear deployment, and utilize new applications such as cyber and smart grid technologies.

S. 2094—Enhancing State Energy Security Planning and Emergency Preparedness Act

Planning for energy sector disruptions—often led by state energy offices—is essential to safeguarding energy system reliability and resilience. Energy assurance planning can help to achieve a robust, secure and reliable energy infrastructure that is also able to restore services rapidly in the event of any disaster. Nearly all state and territory governments and select local governments have an energy security or assurance plan, which serves as a foundation for action when an energy disruption threatens public welfare or when the energy industry requests help. These plans address energy supply risks and vulnerabilities and enable a quick recovery and restoration. Combined with training and exercises for personnel and stakeholders, energy assurance plans enhance response and recovery efforts and support resiliency.

The Department will continue to review the legislation and looks forward to working with Congress as the legislative process moves forward.

CONCLUSION

Thank you again for the opportunity to be here today. The Department appreciates the ongoing bipartisan efforts to address our Nation's energy challenges, and looks forward to working with the Committee on the legislation on

today's agenda and any future legislation. I would be happy to answer your questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by H.R. 2114, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENERGY POLICY AND CONSERVATION ACT OF 1975

Public Law 94-163, As Amended

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 Sec. 365. General provisions.
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 Sec. 367. State Energy Security Plans

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TITLE III—IMPROVING ENERGY EFFICIENCY

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PART D—STATE ENERGY CONSERVATION PROGRAMS

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FEDERAL ASSISTANCE TO STATES

SEC. 363. (a)

* * * * *

[(e)(1) Effective October 1, 1991, to be eligible for Federal financial assistance pursuant to this section, a State shall submit to the Secretary, as a supplement to its energy conservation plan, an energy emergency planning program for an energy supply disruption, as designed by the State consistent with applicable Federal and State law. The contingency plan provided for by the program shall include an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies. The submission of such plan shall be for informational purposes only and without any requirement of approval by the Secretary.

[(2) Federal financial assistance made available under this part to a State may be used to develop and conduct the energy

emergency planning program requirement referred to in paragraph (1).】

【(f)】 (e) If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within such State, the Secretary may, beginning in fiscal year 1994, provide up to \$1,000,000 to such State for deposit into a revolving fund established by such State for the purpose of financing energy efficiency improvements in State and local government buildings. In making such determination the Secretary shall consider whether—

* * * * *

GENERAL PROVISIONS

SEC. 365. (a) The Secretary may prescribe such rules as may be necessary or appropriate to carry out his authority under this part.

* * * * *

(f) For the purpose of carrying out this part, there are authorized to be appropriated 【\$125,000,000】 \$90,000,000 for each of fiscal years 【2007 through 2012】 2021 through 2025.

* * * * *

DEFINITIONS

SEC. 366. As used in this part—

* * * * *

(3) The term “energy audit” means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy conservation measures or renewable-resource energy measures and which—

(A) is carried out in accordance with rules of the Secretary; and

(B) imposes—

(i) no direct costs, with respect to individuals who are occupants of dwelling units in any State having a supplemental State energy conservation plan 【approved under section 367】], and

(ii) only reasonable costs, as determined by the Secretary, with respect to any person not described in clause (i).

* * * * *

SEC. 367. STATE ENERGY SECURITY PLANS.

(a) *IN GENERAL.*— Federal financial assistance made available to a State under this part may be used for the implementation, review, and revision of a State energy security plan that assesses the State’s existing circumstances and proposes methods to strengthen the ability of the State, in consultation with owners and operators of energy infrastructure in such State, to—

(1) secure the energy infrastructure of the State against all physical and cybersecurity threats;

(2) mitigate the risk of energy supply disruptions to the State and enhance the response to, and recovery from, energy disruptions; and

- (3) *ensure the State has a reliable, secure, and resilient energy infrastructure.*
- (b) **CONTENTS OF PLAN.**—A State energy security plan described in subsection (a) shall—
- (1) *address all energy sources and regulated and unregulated energy providers;*
 - (2) *provide a State energy profile, including an assessment of energy production, distribution, and end-use;*
 - (3) *address potential hazards to each energy sector or system, including physical threats and cybersecurity threats and vulnerabilities;*
 - (4) *provide a risk assessment of energy infrastructure and cross-sector interdependencies;*
 - (5) *provide a risk mitigation approach to enhance reliability and end-use resilience; and*
 - (6) *address multi-State, Indian Tribe, and regional coordination planning and response, and to the extent practicable, encourage mutual assistance in cyber and physical response plans.*
- (c) **COORDINATION.**—In developing a State energy security plan under this section, the energy office of the State shall, to the extent practicable, coordinate with—
- (1) *the public utility or service commission of the State;*
 - (2) *energy providers from the private sector; and*
 - (3) *other entities responsible for maintaining fuel or electric reliability.*
- (d) **FINANCIAL ASSISTANCE.**—A State is not eligible to receive Federal financial assistance under this part, for any purpose, for a fiscal year unless the Governor of such State submits to the Secretary, with respect to such fiscal year—
- (1) *a State energy security plan described in subsection (a) that meets the requirements of subsection (b); or*
 - (2) *after an annual review of the State energy security plan by the Governor—*
 - (A) *any necessary revisions to such plan; or*
 - (B) *a certification that no revisions to such plan are necessary.*
- (e) **TECHNICAL ASSISTANCE.**—Upon request of the Governor of a State, the Secretary may provide information and technical assistance, and other assistance, in the development, implementation, or revision of a State energy security plan.
- (f) **REQUIREMENT.**—Each State receiving Federal financial assistance under this part shall provide reasonable assurance to the Secretary that the State has established policies and procedures designed to assure that the financial assistance will be used—
- (1) *to supplement, and not to supplant, State and local funds; and*
 - (2) *to the maximum extent practicable, to increase the amount of State and local funds that otherwise would be available, in the absence of the financial assistance, for the implementation of the State energy security plan under this section.*
- (g) **PROTECTION OF INFORMATION.**—Information provided to, or collected by, the Federal Government under this section—
- (1) *shall be exempt from disclosure under section 552(b)(3) of title 5, United States Code; and*

(2) shall not be made available by any Federal agency, State, political subdivision of a State, or Tribal authority pursuant to any Federal, State, or Tribal law, as applicable, requiring public disclosure of information or records.

(h) SUNSET.—This section shall expire on October 31, 2024.

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**DEPARTMENT OF THE INTERIOR AND RELATED
AGENCIES APPROPRIATIONS ACT, 1985**

Public Law 98–473, as Amended

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TITLE II—RELATED AGENCIES

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Department of Energy

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Energy Conservation

For necessary expenses in carrying out energy conservation activities, \$467,969,000 to remain available until expended: Provided, That for the base State Energy Conservation Program (part D of the Energy Policy and Conservation Act, [sections 361 through 366] *sections 361 through 367*), each State will hereafter match in cash or in kind not less than 20 percent of the Federal contribution: Provided further, That these funds may be used for grants to the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs, 42 U.S.C. 6321 6327) and under the National Energy Extension Service Act (42 U.S.C. 7001 7011): Provided further, That pursuant to section 111(b)(1)(B) of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5821(b)(1)(B), of the amount appropriated under this head, \$16,000,000 shall be available for a grant for basic industry research facilities located at Northwestern University without section 111(b)(2) of such Act being applicable.

* * * * *