

# Bipartisan Infrastructure Law (BIL) - Section 40101(d) Public Hearing

SEC. 40101: Preventing Outages & Enhancing the Resilience  
of the Electric Grid

Sec. 40101(d): Grants to States and Indian Tribes



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# Infrastructure Investment & Jobs Act (IIJA) of 2021

- Also known as the Bipartisan Infrastructure Law (BIL).
- Signed into law on November 15, 2021.
- Section 40101(d) of the BIL established a Formula Grant Program and provided instruction and guidance to DOE on administration of the program.
- Entirety of the Act is available at:  
<https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.htm>.

# Grid Resilience Formula Grant: Summary

- Program appropriates approximately \$471 million funding in FY1 and approximately \$459 million per year for FY 2023-2026.
- Kansas' portion is approximately \$6.7 million for FY 2022 and \$6.6 million for FY 2023.
- Awards under this formula grant are limited to States and Indian Tribes. States and Tribes may subgrant to eligible entities for approved projects.
- States and Tribes need to submit application for FY1 and FY2 to DOE by March 31, 2023.

# Grid Resilience Formula Grants: DOE Objectives

- DOE's Objectives:
  - Improve the all hazards resilience of the electric grid against disruptive events.
    - Disruptive event is “an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster.
  - Investment in modernized grid infrastructure that can enable consumer access to lower-cost energy.
  - Accommodate increased electrification, renewables, and distributed systems.
  - Create good paying quality jobs.

# Grid Resilience Formula Grants: Scope

- Scope of the 40101(d):
  - States and Tribes may execute resilience projects that will generate the greatest community benefit in reducing the likelihood and consequences of disruptive events to the electric grid.
  - Each year of the program, States and Tribes must provide a Program Narrative describing the criteria and methods to make subawards to “eligible entities”. However, there is no requirement to update the Program Narrative annually unless the Program Narrative has been revised.

# Grid Resilience Formula Grants: Scope

- Eligible entities, eligible for subawards, include:
  - An electric grid operator;
  - An electricity storage operator;
  - An electricity generator;
  - A transmission owner or operator;
  - A distribution provider;
  - A fuel supplier; and
  - Any other relevant entity, as determined by the Secretary of DOE.

# Grid Resilience Formula Grants: Scope

- Resilience projects to be funded by the DOE may include:
  - weatherization technologies and equipment;
  - fire-resistant technologies and fire prevention systems;
  - monitoring and control technologies;
  - the undergrounding of electrical equipment;
  - utility pole management;
  - relocation of power lines or reconductoring of power lines with low-sag;
  - vegetation and fuel-load management;
  - use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including microgrids and battery-storage subcomponents;
  - adaptive protection technologies;
  - advanced modeling technologies;
  - hardening of power lines, facilities, substations, of other systems; and
  - replacement of old overhead conductors and underground cables.



# Grid Resilience Formula Grants: Scope

- A subaward to an eligible entity may not be used for:
  - Construction of a new -
    - Electric generating facility; or
    - Large-scale battery-storage facility that is not used for enhancing system adaptive capacity during disruptive events; or
  - Cyber security.

# Grid Resilience Formula Grants: Law Specific Requirements

- Special terms and conditions apply to projects funded by the BIL relating to:
  - Reporting, tracking and segregation of incurred costs;
  - Reporting on job creation and preservation;
  - Publication of information on the internet;
  - Access to records by Inspectors General and the Government Accountability Office;
  - Requiring all of iron, steel, manufacturing goods and construction materials used in infrastructure projects are produced in US;
  - Ensuring laborers and mechanics employed by contractors or subcontractors for funded projects are paid wages equivalent to prevailing wages on similar projects in the area;
  - Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and
  - Certification and registration.
- Recipients of funding must comply with Federal, State and local laws, regulations, and DOE policy and guidance and recipients must flow down the requirements to subrecipients.

# Grid Resilience Formula Grants: Award Overview

- DOE anticipates making awards initially with an estimated period of performance of 5 years. Awards may be extended to span the amount of time necessary for States to complete all subaward projects, up to 10 years.

# Grid Resilience Formula Grants: Eligibility Information

- Awards under this formula grant are limited to States and Indian Tribes.
- States and Indian Tribes may make subawards to eligible entities for resilience projects that implement resilience measures listed previously.
- Each State and Indian Tribe is required to match 15% of the amount of each grant provided under the program.
  - Kansas will require that subaward recipients provide excess cost match funds to cover the State's 15% cost match.
  - Eligible entities that receive a subaward are required to match 100% of the amount of the subaward plus the 15% State match.
  - However, an eligible entity selling in total less than 4,000,000 MWh per year (small utility) will match 1/3<sup>rd</sup> of the amount of the subaward plus the 15% State match.

# Grid Resilience Formula Grants: Eligibility Information

- Small Utility Set-Aside
  - The percentage of subawards made available to the small utility class should not be less than the percentage of all customers in the State or Indian Tribe that are served by those eligible entities.
  - Small utility customers in Kansas represent approximately 36.3% of total Kansas customers per DOE/EIA data. This equates to \$2,419,823 for FY1 and \$2,412,842 for FY2.

# Grid Resilience Formula Grants: Application Information

- States or Tribes must provide (in addition to standard forms and an environmental questionnaire) a Program Narrative which addresses:
  - Objectives and Metrics for guiding investment decisions;
  - Criteria to be used for selecting awards;
  - Methods to be used for soliciting, awarding and distributing funds;
  - Funding Distribution plan describing proposed distribution and categories of recipients of subgrants to be provided;
  - Equity Approach to support the BIL objective to invest in workforce and advance DOE's equity, environmental and energy justice priorities;
  - Technical Assistance describing how State or Tribe will utilize up to 5% of Federal grant funds for project administration and technical assistance; and,
  - Public Notice and Public Hearing to review criteria and methods to be used to award subgrants.

# Grid Resilience Formula Grants:

## Kansas' Proposed Program Narrative – Objectives and Metrics

- This Program Narrative is intended to apply for each year for the five year award period (FY2022 – FY2026).
- Objectives and Metrics:
  - Objective 1. Improve the reliability and resilience of the electric grid to reduce the frequency and duration of power interruptions, especially in areas that experience higher than system average frequency and duration outages.
  - Metrics:
    - Historical and post project resiliency and reliability metrics.
    - Age of system or line segments and type of equipment that failed, and number of annual outages.
    - Number of customers to be impacted by project and percentage of impacted customers to total customers.

# Grid Resilience Formula Grants:

## Kansas' Proposed Program Narrative – Objectives and Metrics

- Objective 2. Promote grid equity by ensuring that funds are distributed equitably particularly in rural, disadvantaged and underserved communities (communities whose residents would be negatively impacted by large utility project costs, or whose access to services, supplies or a work force are limited).
- Metrics:
  - Identification of disadvantaged communities (DACs) using Climate and Economic Justice Screening Tool (CEJST) and the Energy Justice Tool.
  - Historical and post project estimated interruption frequency and duration data.
  - Pro rata customer impact of total project cost.
  - Number of customers to be impacted by project and percentage of impacted customers to total customers in the disadvantaged or underserved community.



# Grid Resilience Formula Grants:

## Kansas' Proposed Program Narrative – Objectives and Metrics

- Objective 3. Advance resilience investment projects that are not currently being funded or not already under consideration for funding. Desired projects to be advanced are those that have either been deferred due to a lack of funding or projects that are in the early planning stage.
- Metrics:
  - Certification by eligible entity and verification by State.

# Grid Resilience Formula Grants:

## Kansas' Proposed Program Narrative – Objectives and Metrics

- Objective 4. Advance projects that attract, train, and retain an appropriately skilled Kansas workforce.
- Metrics:
  - Description of efforts to attract, train, and retrain a skilled workforce.
  - Description of how project will use strong labor standards and protections.
  - Number of jobs pre and post award; number of employees added from the project community; number of employees added that have lost jobs due to the displacements of fossil energy jobs.
  - Plans to partner with training providers.
  - Description of efforts to include opportunities for under-represented or historically excluded workers.

# Grid Resilience Formula Grants: Kansas' Proposed Program Narrative - Criteria

- Criteria (to be used for selecting awards):
  - Prioritize projects that will generate the greatest community benefit in reducing the likelihood and consequences of disruptive events.
    - Applicants required to provide all expected benefits and costs for each project in order to determine the total net benefit of the project.
  - Prioritize funding to small utility class with minimum of 36.3% of available funds set-aside for small utilities.
  - Additional consideration will be given for:
    - Projects located in or benefiting DACs and underserved communities;
    - Projects that create quality jobs, especially in the DACs and small communities, increase community benefits and support concepts of diversity, equity, inclusion and accessibility.
  - Funding only for projects to be performed in the State of Kansas.

# Grid Resilience Formula Grants: Kansas' Proposed Program Narrative - Methods

- Methods (to be used for soliciting, awarding and distributing funds):
  - Anticipate solicitation of applications through public announcements.
  - Priority given to projects that generate the greatest community benefit in reducing the likelihood and consequences of disruptive events.
  - Evaluation of each submission based on the defined criteria and metrics.
  - Interviews with the applicants may be necessary to clarify and/or expound on issues.
  - Potential for statewide associations representing small Kansas coops and muni electric utilities to be considered as agents or as eligible entities for subgrant recipients.
  - Subgrant recipients required to provide all reporting on project activities as required by DOE.

# Grid Resilience Formula Grants:

## Kansas' Proposed Program Narrative – Funding Description

- Preference given to entities that deliver electricity directly to the consumer (utilities).
- Propose to fund first the approved projects to small utilities, then to the larger utilities, less the allowable 5% for the State set-aside for administration and technical assistance.

# Grid Resilience Formula Grants:

## Kansas' Proposed Program Narrative – Equity Approach

- Will make every reasonable effort to ensure funds awarded are utilized to generate the greatest community benefit in reducing the likelihood of disruption.
- Grid equity and employment opportunity are two of the four guiding objectives for the Program.
- Grid security and quality job opportunities are priority for awards.
- Ensure approved projects will incorporate quality jobs, community benefits, diversity, inclusion and accessibility.

# Grid Resilience Formula Grants: Next Steps

- Kansas will make its application to the DOE on or before March 31, 2023.
- Once the application is approved by the DOE, Kansas will solicit projects from eligible entities.
- The State cannot execute a proposed resilience project or issue subawards for projects until DOE reviews and provides written approval of the project.

# Grid Resilience Formula Grants: Next Steps

- In order to receive written approval, Kansas must:
  - Confirm that the subawardee:
    - is an eligible entity;
    - is not debarred or a suspended entity;
    - will pay to laborers and mechanics wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the “Davis Bacon Act”.
  - Confirm that:
    - the process to solicit subawards complies with the general procurement standards in Title 2 CFR 200.318;
    - the proposed project is an eligible activity;
    - the proposed subaward effort is consistent with the Program Narrative;
    - the primary purpose of the project is not cyber security;
    - no apparent conflict of interest exists between Kansas and subawardee;
    - all required award provisions flow down in resulting subcontract.



# Grid Resilience Formula Grants: Next Steps

- In order to receive written approval, Kansas must also:
  - Provide:
    - budget information;
    - a completed Environmental Questionnaire covering the subaward activity;
    - cost match commitment letter from the eligible entity;
    - proposed metrics that will be collected and reported quarterly to measure and demonstrate the beneficial impact of the project on the resilience of the grid and to the community served;
    - Performance of Work in the United States waiver and Buy America for Infrastructure Projects waiver (if applicable);
    - a summary description of any application submitted by subawardee to DOE under Section 40101(c) of the BIL.

# Contact Information

Lynn Retz  
Executive Director  
[l.retz@kcc.ks.gov](mailto:l.retz@kcc.ks.gov)

Jeff McClanahan  
Director of Utilities  
[j.mcclanahan@kcc.ks.gov](mailto:j.mcclanahan@kcc.ks.gov)

