

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

MODEL STATE LAW PROVISION TO PROMOTE LOCAL EMPLOYMENT IN CONNECTION WITH DECARBONIZATION LAWS AND POLICIES*

Introduction

The *Model Laws for Deep Decarbonization in the United States* project at Columbia Law School’s Sabin Center for Climate Change Law develops model laws that can be adopted by all levels of government to help accelerate a sustainable U.S. transition to net zero greenhouse gas (“GHG”) emissions, at the same time as creating decent jobs for local communities.¹

Further to the recommendation set out in *Legal Pathways to Deep Decarbonization in the United States* that state and local governments should avoid adopting decarbonization laws that contain “local content requirements” (“LCRs”),² this Model State Law Provision to Promote Local Employment in Connection with Decarbonization Laws and Policies (the “**Model Provision**”) provides a regulatory framework to promote local employment without resorting to protectionist measures.

A key goal of the Model Provision is to help secure public support and private investment in a “just transition” to a zero-carbon economy through evidence-based policies

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¹ Sabin Center for Climate Change Law, Columbia Law School, Columbia University Earth Institute, <http://columbiaclimatelaw.com> (last visited June 10, 2020).

² Elizabeth Trujillo, *International Trade*, in *Legal Pathways to Deep Decarbonization in the United States* 205 (Michael B. Gerrard and John C. Dernbach eds., 2019) (“*Legal Pathways to Deep Decarbonization in the United States*”) (Current trade rules dictate that “[S]tate and local governments should avoid adopting decarbonization laws that contain LCRs. The trade rules can accommodate legitimate decarbonization efforts, even if they have some discriminatory impact, as long as they are not linked to LCRs intended to advantage domestic producers over foreign ones. If the U.S. government, state governments, or local governments seek to facilitate a transition toward cleaner industrial markets, they should adopt policies that apply evenly on domestic and foreign producers... [A]s the U.S. government as well as state and local governments develop decarbonization laws and policies that contain LCRs, they should make every effort to ensure that they do not ‘constitute a means of arbitrary or unjustifiable discrimination’ or a ‘disguised restriction on international trade.’”)

that facilitate a virtuous circle of cost reduction, economic growth, and the creation of local, decent jobs.³

The Model Provision is not intended to be a comprehensive, stand-alone state law. Rather, it is a provision designed to be included in more comprehensive state legislation addressing climate change mitigation or adaptation, or other legislation addressing decarbonization. Such legislation should take into consideration international and regional trade law implications under both World Trade Organization (“WTO”) rules and the United States-Mexico-Canada-Agreement (“USMCA”) (which replaced NAFTA). For completeness, it should also be noted that LCRs – although the focus here – are not the only trade issue implicated in the Model Provision or decarbonization policies generally.

LCRs are prohibited by WTO rules and international trade law

As described in detail in *Legal Pathways to Deep Decarbonization in the United States*, governments must ensure that their climate change policies and decarbonization strategies comply with international trade rules.⁴

In the context of international trade, LCRs are “policies imposed by governments that require firms to use domestically-manufactured goods or domestically-supplied services in order to operate in an economy.”⁵ Governments often resort to LCRs more frequently during economic difficulties.⁶

There are two broad categories of LCRs:

First, they can take the form of quantitative requirements that are legally binding in terms of volumes, such as number of local staff and contracts to domestic suppliers, or in value such as

³ For a broader discussion of “just transition” policies, *see* International Labour Organization, Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All (2015), available at http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf.

⁴ *Legal Pathways to Deep Decarbonization in the United States*, p. 197.

⁵ OECD, Topics: Local content requirements: Local content requirements impact the global economy, <https://www.oecd.org/trade/topics/local-content-requirements/>; Sauvé, “Life beyond local content: Exploring alternative measures of industry support in the context of WTO accession”, *Journal of International Trade*, Vol. 1 (2016), p.10.

⁶ S. Shadikhodjaev, *Industrial Policy and the World Trade Organization* (Cambridge University Press, 2018), p.148.

the percentage of local procurement in the overall investment. Second, they can also be qualitative requirements such as local technology transfer and local staff training.⁷

LCRs are prohibited under WTO rules and international trade law because they have a discriminatory impact on imported goods,⁸ unless they come under a government procurement exception under GATT Article III:8.⁹ “Voluntary” commitments by investors to use local content are also prohibited.¹⁰ In spite of these restrictions, however, LCRs “have remained, and will likely continue to be, in wide use.”¹¹

Particularly since the 2008 Global Financial Crisis, LCRs have proliferated as a component of “green industrial policies” to promote local manufacturing firms and jobs, most notably in the renewable energy sector.¹²

Indeed, the use of LCRs in the renewable energy sector has given rise to WTO disputes against the EU, Canada, India, and the United States.¹³

⁷ OECD, Joint Working Party on Trade and Environment Greening Regional Trade Agreements - Subsidies Related to Energy and Environmental Goods (October 29, 2019), section 3.1, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/JWPTE\(2017\)8/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/JWPTE(2017)8/FINAL&docLanguage=En);

⁸ Panel Report, *United States — Certain Measures Relating to the Renewable Energy Sector*, WTO Doc. TW/DS510/R (June 27, 2019); Appellate Body Report, *Canada—Renewable Energy Measures Affecting Renewable Energy Generation Sector*, WTO Doc. WT/DS412/AB/R (May 6, 2013); OECD, Joint Working Party on Trade and Environment Greening Regional Trade Agreements - Subsidies Related to Energy and Environmental Goods 2019; LPDD book, pp. 204-205.

⁹ See Appellate Body Report, *Canada—Renewable Energy Measures Affecting Renewable Energy Generation Sector*, WTO Doc. WT/DS412/AB/R (May 6, 2013).

¹⁰ S. Shadikhodjaev, *Industrial Policy and the World Trade Organization* (Cambridge University Press, 2018), p. 177.

¹¹ S. Shadikhodjaev, *Industrial Policy and the World Trade Organization* (Cambridge University Press, 2018), p. 147; *Legal Pathways to Deep Decarbonization in the United States*, p. 199.

¹² OECD, *Green Finance and Investment: Overcoming Barriers to International Investment in Clean Energy*, OECD Publishing, Paris (2015), https://read.oecd-ilibrary.org/environment/overcoming-barriers-to-international-investment-in-clean-energy_9789264227064-en#page66, p. 64.

¹³ Appellate Body Report, *Canada - Certain Measures Affecting the Renewable Energy Generation Sector*, WTO Doc. WT/DS412/19 (May 6, 2013); *European Union and certain Member States - Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS452/5; Panel Report, *United States — Certain Measures Relating to the Renewable Energy Sector*, WTO Doc. TW/DS510/R (June 27, 2019); *United States - Certain Measures Related to Renewable Energy*, WT/DS563/4.

In 2019, the WTO held that a number of US state renewable energy subsidies contained prohibited LCRs.¹⁴ The offending measures offered additional incentives contingent upon the use of domestic over imported goods such as solar panel components. The WTO ordered the US to bring the measures into conformity with its obligations under Article III:4 of the GATT 1994. As of late 2020, the US's appeal of the decision to the WTO's Appellate Body is pending.¹⁵

LCRs may be incompatible with International Investment Agreements

In addition to WTO and international trade law, the US is also subject to international investment law obligations arising under numerous bilateral investment treaties and investment chapters of free trade agreements concerning the protection of foreign investment such as the USMCA. LCRs may be prohibited under such international investment protection agreements.¹⁶

Alternatives to LCRs

LCRs are politically attractive because of their potential to have immediate import-substitutive and job-creative effects at little or no fiscal cost to the government.¹⁷ LCRs may therefore be viewed as a tool to secure local political, public and trade union support for decarbonization

¹⁴ Panel Report, *United States — Certain Measures Relating to the Renewable Energy Sector*, WTO Doc. TW/DS510/R (June 27, 2019), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds510_e.htm. The case concerned the following 11 state measures:

The Renewable Energy Cost Recovery Incentive Payment Program ('RECIP') in the State of Washington; the Self-Generation Incentive Program ('SGIP') in the State of California; the Los Angeles Department of Water and Power's ('LADWP') Solar Incentive Program in the State of California; the Montana Tax Incentive for Ethanol Production ('TIEP') in the State of Montana; the Montana Tax Credit for Biodiesel Blending and Storage in the State of Montana; refund for Taxes paid on Biodiesel by Distributor or Retailer in the State of Montana; the Connecticut Residential Solar Investment Program ('CRSIP') in the State of Connecticut; the Renewable Energy Credits in the State of Michigan; the Delaware Solar Renewable Energy Credits in the State of Delaware; the Made in Minnesota Solar Incentive Program ('MSIP') in the State of Minnesota; and the Massachusetts Clean Energy Centre's Commonwealth Solar Hot Water Program, ('CSHWP') in the State of Massachusetts.

¹⁵ *Id.*

¹⁶ See *Mesa Power Grp, LLC v. Government of Canada*, UNCITRAL, PCA Case No. 2012-17, Award (March 24, 2016), ¶¶ 208, 404ff, 466, Dissenting and Concurring Opinion of Arbitrator Brower. See also Elizabeth Trujillo, "Balancing Sustainability, the Right to Regulate, and the Need for Investor Protection: Lessons from the Trade Regime", 59 *Boston College L.R.* 2735, 2754-2756 (2018).

¹⁷ S. Shadikhodjaev, *Industrial Policy and the World Trade Organization* (Cambridge University Press, 2018), p. 147; Sauv e, "Life beyond local content: Exploring alternative measures of industry support in the context of WTO accession", *Journal of International Trade*, Vol. 1 (2016), pp.2, 21.

programs. Arguably, LCRs can deliver “instant political gratification” compared to other more complex and long-term industrial support measures addressed to underlying competitiveness and labor market challenges.¹⁸

The economic and labor market benefits of LCRs are, however, heavily debated.¹⁹ There is clear evidence that LCRs can distort trade, undermine long-term competitiveness, drive up costs that feed through to consumer prices, and have mixed effects on local job creation.²⁰ In a 2014 survey by the OECD, foreign investors stated that LCRs were the main policy impediment to international investment in solar and wind energy projects.²¹ In the US and abroad, LCRs have been blamed for increasing renewable energy costs.²²

In nascent markets, there is a balance to be struck between securing immediate local support for decarbonization policies and building a competitive sector that will benefit the local economy and workers in the longer term.²³ Particularly in new technologies, it may be

¹⁸ Hufbauer et al, *Local Content Requirements: Report on a Global Problem* (2013), p. 40, <http://files.publicaffairs.geblogs.com/files/2014/08/Local-Content-Requirements-Report-on-a-Global-Problem.pdf>; Sauvé, “Life beyond local content: Exploring alternative measures of industry support in the context of WTO accession”, *Journal of International Trade*, Vol. 1 (2016), p.2.

¹⁹ OECD, *Overcoming Barriers to International Investment in Clean Energy*, Green Finance and Investment (OECD Publishing, 2015), p.48, https://read.oecd-ilibrary.org/environment/overcoming-barriers-to-international-investment-in-clean-energy_9789264227064-en#page66; S. Shadikhodjaev, *Industrial Policy and the World Trade Organization* (Cambridge University Press, 2018), p. 151.

²⁰ OCED, *Topics: Local content requirements: Local content requirements impact the global economy*, <https://www.oecd.org/trade/topics/local-content-requirements/>; OCED, *Joint Working Party on Trade and Environment Greening Regional Trade Agreements - Subsidies Related to Energy and Environmental Goods 2019*, 3.1; OECD, *Overcoming Barriers to International Investment in Clean Energy*, Green Finance and Investment (OECD Publishing, 2015), p.64, https://read.oecd-ilibrary.org/environment/overcoming-barriers-to-international-investment-in-clean-energy_9789264227064-en#page66.

²¹ OECD, *Overcoming Barriers to International Investment in Clean Energy*, Green Finance and Investment (OECD Publishing, 2015), p.57, https://read.oecd-ilibrary.org/environment/overcoming-barriers-to-international-investment-in-clean-energy_9789264227064-en#page66.

²² Foxwell, “Top-down approach to local content ‘drove costs up’ in France”, *Riviera* (June 11, 2019), <https://www.rivieramm.com/news-content-hub/top-down-approach-to-local-content-lsquo-drove-costs-uprsquo-in-france-55156>; Greentech Media, “Inside New York’s Push to Be ‘Center of Gravity’ for US Offshore Wind” (January 21, 2020), <https://www.greentechmedia.com/articles/read/inside-new-yorks-push-to-be-center-of-gravity-for-us-offshore-wind>; Sustainable Prosperity, “Domestic Content Requirements for Renewable Energy Manufacturing, April 2012, <https://institute.smartprosperity.ca/sites/default/files/publications/files/Domestic%20Content%20Requirements%20for%20Renewable%20Energy%20Manufacturing.pdf>.

²³ Sharma, “How important is local content to US offshore wind, A Word About Wind (September 5, 2018), <http://membership.awordaboutwind.com/blog/how-important-is-local-content-to-us-offshore-wind>

unavoidable to import proven technical expertise and established supply chains, at least initially.

It is nevertheless possible to implement an industrial policy that promotes sustainable local employment in new, green industries without breaching international trade and investment rules.²⁴

Alternatives to prohibited LCRs include government policies to create a long-term, competitive, market-driven local industry through research and development support programs, training programs, infrastructure investment, and demand-side instruments (such as feed-in-tariffs, auctions, and tax incentives) to increase domestic demand.²⁵

To help develop a competitive local industry, governments can also work with foreign investors to promote corporate social responsibility/sustainability best practices and supplier developer programs to build competitive local supply chains.²⁶ The OECD Guidelines for Multinational Enterprises recommend *inter alia* that foreign investors should:

[] **Encourage local capacity building** through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.

[] **Encourage human capital formation**, in particular by creating employment opportunities and facilitating training opportunities for employees.²⁷

²⁴ Sauv , "Life beyond local content: Exploring alternative measures of industry support in the context of WTO accession", *Journal of International Trade*, Vol. 1 (2016), pp.20-21.

²⁵ OCED, *Joint Working Party on Trade and Environment Greening Regional Trade Agreements - Subsidies Related to Energy and Environmental Goods 2019*, 3.1; https://read.oecd-ilibrary.org/environment/overcoming-barriers-to-international-investment-in-clean-energy_9789264227064-en#page59, p.65; *Local Content Requirements: Report on a Global Problem 2013*, p. 25, 40, <http://files.publicaffairs.geblogs.com/files/2014/08/Local-Content-Requirements-Report-on-a-Global-Problem.pdf>.

²⁶ Sauv , "Life beyond local content: Exploring alternative measures of industry support in the context of WTO accession", *Journal of International Trade*, Vol. 1 (2016), p.24.

²⁷ *OECD Guidelines for Multinational Enterprises*, 2011 Edition, <http://www.oecd.org/daf/inv/mne/48004323.pdf>, p.19 [emphasis added].

Such an approach would also be consistent with the Sustainable Development Goals (“SDGs”), which were adopted by the U.S. and all other United Nations Member States in 2015. The following individual SDGs are particularly relevant:

Sustainable Development Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

Sustainable Development Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation.

Sustainable Development Goal 10: Reduce income inequality within and among countries.

Sustainable Development Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable.

Sustainable Development Goal 13: Take urgent action to combat climate change and its impacts.²⁸

In the United Kingdom, for example, the government has entered into a “sector deal” with the offshore wind industry (represented by its trade association).²⁹ Instead of LCRs, the sector deal sets non-binding industry-wide targets for local content and employment, together with

²⁸ UN Department of Economic and Social Affairs, Sustainable Development Goals, <https://sdgs.un.org/goals>.

²⁹ UK Government Policy Paper, Offshore Wind: Sector Deal, March 8, 2019, <https://www.gov.uk/government/publications/offshore-wind-sector-deal>; CATAPULT, “The Economic Value of Offshore Wind: Benefits to the UK of Supporting the Industry”, March 2017, <https://ore.catapult.org.uk/app/uploads/2017/12/SP-0012-The-Economic-Value-of-Offshore-Wind-1.pdf>.

voluntary disclosure of local content.³⁰ The sector deal is based on mutual benefit and trust, rather than legally binding commitments.³¹

Under the Climate Leadership and Community Protection Act 2019, New York State has established a just transition working group that will provide recommendations for the development of statewide environmental justice policies.³² The working group is intended *inter alia* to “advise the council on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies.”³³

The Model Provision

We consider that the approach taken by New York’s Climate Leadership and Community Protection Act 2019 – which establishes processes for ongoing public investigation, reporting, and consultation into the impact of climate change and decarbonization policies on the local workforce – is an appropriate way to focus on the promotion of local employment in green industry without resorting to protectionist measures.

In particular, we consider that the collection and disclosure of employment information is important because it demonstrates commitment to social priorities – i.e. to ensuring a “just transition” – and also assists in the continuous development of evidence-based policies that promote decent, long-term green jobs in the local community.

³⁰ BVG Associates, “Methodology for measuring the UK content of UK offshore wind farms”, May 2015, https://cdn.ymaws.com/www.renewableuk.com/resource/resmgr/Publications/Guides/uk_content_methodology.pdf; BVG Associates, “50% UK Content: Is that all?”, 2013, <https://bvgassociates.com/wp-content/uploads/2016/08/1306-BVGA-RUK2013-Offshore-Roberts.pdf>. Note, however, that international trade law restrictions on LCRs may extend to “voluntary” measures. See *US -- Measures Concerning the Importation and Marketing and Sale of Tuna and Tuna Products* (AB Report 2012), https://www.wto.org/english/tratop_e/dispu_e/381abr_e.pdf. See also Trujillo, “The WTO Appellate Body Knocks Down U.S. ‘Dolphin-Safe’ Tuna Labels But Leaves a Crack for PPMs”, *American Society of International Law* Vol. 16, Issue 25 (July 26, 2012), <https://www.asil.org/insights/volume/16/issue/25/wto-appellate-body-knocks-down-us-“dolphin-safe”-tuna-labels-leaves>; Trujillo, “A Dialogical Approach to Trade and Environment”, *Journal of International Economic Law* Vol. 16, Issue 3 (September 2013), <https://doi.org/10.1093/jiel/jgt019>.

³¹ RenewableUK, “A Guide to Measuring the UK Content of Offshore Wind Farms”, May 2015, https://cdn.ymaws.com/www.renewableuk.com/resource/resmgr/publications/guides/guide_to_measuring_uk_content.pdf, p.4.

³² Sabin Center for Climate Change Law, “Establish a Just Transition Working Group”, <https://climate.law.columbia.edu/content/establish-just-transition-working-group>.

³³ New York State Climate Leadership and Community Protection Act, §2 ECL §75-0103(8).

Accordingly, the following Model Provision is adapted from the Climate Leadership and Community Protection Act 2019. The Model Provision focuses on the local employment aspects of climate change and decarbonization policy, and could be incorporated into a State’s broader regulatory framework. The Model Provision assumes the central role of the private sector in local green industry job creation; it does not prescribe or suggest public measures that would have a substantial fiscal impact on the State, such as subsidies or research and development investment, though such measures are worthy of separate consideration.

Although it does not comment on protectionist measures, the Model Provision goes beyond the New York precedent and expressly provides that the State’s intention is to create an “internationally competitive” green industry.

The Model Provision also expands on the just transition working group’s mandate to include research and proposals on ways to (i) increase green sector exports, and (ii) establish corporate social responsibility/sustainability best practices that encourage the private sector to develop local capacity building and local human capital formation.

[Model Provision]

[To be incorporated into State legislation concerning climate change mitigation and adaptation]

[[AN ACT] relating to [energy][energy and the environment][[climate change mitigation, adaptation][, [climate] resiliency][, and deep decarbonization]; creating a comprehensive regulatory program to reduce greenhouse gas emissions, and to develop internationally competitive green technologies and inclusive and sustainable practices and projects within the private sector to achieve deep decarbonization and long-term local economic benefits; creating the [State Climate Action Council], which shall identify and make recommendations on regulatory measures and other State actions that will ensure the attainment of the statewide greenhouse gas emissions limits; creating the Just Transition Working Group, which shall advise and report on the impact of climate change on the workforce; and providing other matters properly relating thereto.]

[Relevant Definitions:]

“Council” means the [State Climate Action Council] established pursuant to section [●] of this article.

“Disadvantaged communities” means communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, as identified pursuant to section [●] of this article.

[Operative Sections:]³⁴

Section [●]. Action undertaken by [State] to reduce greenhouse emissions and achieve deep decarbonization will advance the development of internationally competitive green technologies and sustainable practices and projects within the private sector, which can have far-reaching impacts such as a reduction in the cost of renewable energy components, and the creation of jobs and tax revenues in [State].

³⁴ NOTE: Operative language should be conformed to the priorities set out in the broader legislative or regulatory framework in which the Model Provision is to be incorporated.

Section [●]. Climate change especially heightens the vulnerability of disadvantaged communities, which bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination. Actions undertaken by [State] to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities, control potential regressive impacts of future climate change mitigation and adaptation policies on these communities, and prioritize the allocation of public investments in these areas.

Section [●]. Creating good jobs and a thriving economy is a core concern of [State]. Shaping the ongoing transition in [State's] energy sector to ensure that it creates good jobs and supports workers and communities that may lose employment in the current transition must be key concerns of [State's] climate policy. Setting clear standards for job quality and training standards encourages not only high-quality work but positive economic impacts.

Section [●]. Ensuring career opportunities are created and shared geographically and demographically is necessary to ensure increased access to good jobs for marginalized communities while making the same neighborhoods more resilient. Climate change has a disproportionate impact on low-income people, women, and workers. It is in the interest of the [State] to support and promote the interests of these groups against the impacts of climate change and severe weather events and to advance our equity goals by ensuring quality employment opportunities in safe working environments.

Section [●]. The complexity of the ongoing energy transition, the uneven distribution of economic opportunity, and the disproportionate cumulative economic and environmental burdens on communities mean that there is a strong [State] interest in setting a floor statewide for labor standards, but allowing and encouraging individual agencies and local governments to raise standards.

[State] Climate Action Council.

Section [●]. There is hereby established the [State] Climate Action Council (“Council”) which shall consist of the following members:

- a. the [governmental leaders/commissioners of relevant departments including transportation, health, economic development, agriculture, housing, community, environmental conservation, labor, state energy programs, state power authority][, or their designees].

- b. [●] non-agency expert members appointed by the governor;
- c. [●] member[s] to be appointed by the [majority leader] of the [state legislature upper house];
- d. [●] member[s] to be appointed by the [majority leader] of the [state legislature lower house];
- e. [●] member[s] to be appointed by the [minority leader] of the [state legislature upper house]; and
- f. [●] member[s] to be appointed by the [minority leader] of the [state legislature lower house].

Section [●]. The at large members shall include at all times individuals with expertise in issues relating to climate change mitigation and/or adaptation, including but not limited to environmental justice, labor, public health, regulated industries, and international trade and investment.³⁵

Section [●]. Council members shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

Section [●]. The co-chairpersons of the Council shall be [government leaders/commissioners of relevant departments such as environment and energy] [or their designee].

Section [●]. Each member of the Council shall be entitled to one vote. The Council's approval and adoption of the final Scoping Plan pursuant to this section, and any subsequent interim updates thereto, shall require a [supermajority] of the Council. No action may be taken

³⁵ NOTE: For better cross-sectoral policy work and effective regulations, the Climate Change Council should include an expert on trade and investment matters (particularly regional expertise, as the USMCA has many more enforceable environmental provisions than the original NAFTA). This will allow regulators from both trade and environment disciplines to better work together and align their goals so that decarbonization strategies are sensitive to the trade and investment impact. It will also allow trade regulators to better understand the environmental policy imperatives and better align trade goals with those of climate change mitigation and sustainability.

by the Council unless there is a quorum, which shall at all times be a majority of the members of the Council.

Section [•]. Any vacancies on the Council shall be filled in the manner provided for the initial appointment.

Section [•]. The Council shall convene advisory panels requiring special expertise and, at a minimum, shall establish advisory panels on [[transportation][, energy intensive and trade-exposed industries][, land-use and local government][, energy efficiency and housing][, power generation][, and agriculture and forestry]. The purpose of the advisory panels shall be to provide recommendations to the Council on specific topics, in its preparation of the Scoping Plan, and interim updates to the Scoping Plan, and in fulfilling the Council's ongoing duties.

Just Transition Working Group.

Section [•]. The Council shall convene a Just Transition Working Group. The working group shall be chaired by the [governmental leader/commissioner for labor] and [senior representative of the State energy industry or energy R&D body] and shall consist of no less than [•], but no more than [•] members and shall include [the governmental leader/commissioners of [housing][, communities][, public service][, representatives of environmental justice communities][, and representatives of labor organizations][, clean energy developers][, and at least [•] representatives of distinct energy-intensive industries].

The Just Transition Working Group shall:

- a. advise the council on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies, with specific focus on training and workforce opportunities for disadvantaged communities, and segments of the population that may be underrepresented in the clean energy workforce such as veterans, women and formerly incarcerated persons;
- b. identify energy-intensive industries and related trades and identify sector specific impacts of the State's current workforce and avenues to maximize the skills and expertise of [State] workers in the new energy economy;

c. identify sites of electric generating facilities that may be closed as a result of a transition to a clean energy sector and the issues and opportunities presented by reuse of those sites;

d. with respect to potential for greenhouse gas emission limits, advise the council on the potential impacts of carbon leakage risk on [State] industries and local host communities, including the impact of any potential carbon reduction measures such as border tax adjustments on the competitiveness of [State] business and industry;³⁶

e. advise the Council and conduct stakeholder outreach on any other workforce matters directed by the Council; and

f. at a time frame determined by the Council, prepare and publish recommendations to the Council on how to address: issues and opportunities related to the energy-intensive and trade-exposed entities; work-force development for trade-exposed entities, disadvantaged communities and underrepresented segments of the population; measures to minimize the carbon leakage risk and minimize anti-competitiveness impacts of any potential carbon policies and energy sector mandates.

g. the Just Transition Working Group is hereby authorized and directed to conduct a study of and report on:

i. The number of jobs created to counter climate change, which shall include but not be limited to the energy sector, building sector, transportation sector, and working lands sector;

ii. The projection of the inventory of jobs needed and the skills and training required to meet the demand of jobs to counter climate change;

iii. Workforce disruption due to community transitions from a low carbon economy;

³⁶ NOTE: The Just Transition Working Group should consider the state, national, and international-level impacts of carbon reduction measures such as border tax adjustments, in particular to deal with carbon leakage issues that arise out of state or national GHG emissions reduction strategies, i.e. the problem of an increase in GHG emissions in one state or country that results from an emissions reduction by a second state or country with a stricter carbon reduction policy.

iv. Pathways to increase the export of skills, products and services to the global market for green technologies and sustainable practices and projects; and

v. [[Corporate social responsibility and] sustainability]³⁷ best practices to encourage local capacity building and local human capital formation by the private sector in the development of internationally competitive green technologies and sustainable practices and projects.

Section [●]. The Council shall on or before [two] years of the effective date of this article, prepare and approve a Scoping Plan outlining the recommendations for attaining the statewide greenhouse gas emissions limits.³⁸

Section [●]. The Council shall provide meaningful opportunities for public comment from all segments of the population that will be impacted by the plan, including persons living in disadvantaged communities.

Section [●]. On or before [three] years of the effective date of this [article], the Council shall submit the final Scoping Plan to the governor, the [majority leader of the state legislature lower house] and the [majority leader of the state legislature upper house] and post such plan on its website.

Section [●]. The Scoping Plan shall identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits established pursuant to [statutory authority]. The measures and actions considered in such Scoping Plan shall at a minimum include:

[...]

³⁷ NOTE: Such best practices should be clearly distinguished from LCRs, which as discussed above are prohibited under international trade law. As regards terminology, the term “corporate social responsibility” is increasingly used interchangeably with the term “sustainability”. The OECD Guidelines speak of “local capacity building” and “human capital formation”. See OECD Guidelines for Multinational Enterprises, 2011 Edition, <http://www.oecd.org/daf/inv/mne/48004323.pdf>, p.19. In addition, in the investment context, the term “ESG” is used to describe environmental, social, and governance factors that impact the sustainability and society impact of an economic activity or investment.

³⁸ NOTE: The provisions for a Scoping Plan should be adapted to conform with the reporting, consultation, and recommendation processes provided for in the State’s legislative or regulatory framework in which this Model Provision is to be incorporated.

a. Recommendations to aid in the transition of the State workforce and the rapidly emerging clean energy industry.

b. Recommendations to aid the export of skills, products, and services to the global market for green technologies and sustainable practices and projects.

c. Recommendations to establish [[corporate social responsibility] and sustainability] best practices to encourage local capacity building and local human capital formation by the private sector in the development of internationally competitive green technologies and sustainable practices and projects.

[...]