

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>

## **Memorandum to Accompany Model Legislation of Occupational Wage and Benefit Standards in Clean Energy Legislation**

### **Overview**

As clean energy investments and infrastructure have grown rapidly in the United States in recent years, employment in clean energy industries has expectedly been growing rapidly as well. In 2019, 896,800 people were employed in the United States in the electric power generation industry.<sup>1</sup> Of these, 248,000 people were employed primarily by solar energy industries, up 2.3 percent from the previous year; 114,800 were employed by the wind industry, up 3.2 percent. At the same time, 2.38 million people were employed in the energy efficiency sectors, up 3.4 percent.<sup>2</sup> While generally jobs across all energy generation sectors (except wind power) decreased in 2020 due to the COVID-19 pandemic, electric power generation employers anticipate data will show generation-sector job growth in 2021, with most of the increase expected in renewable generation construction.<sup>3</sup>

While these growing sectors represent an important shift in the energy economy – one that will help to combat and mitigate the impacts of climate change – and are creating an abundance of new employment opportunities for many people, it is important to remember that the coinciding shift away from a fossil fuel economy has and will continue to have the effect of displacing existing carbon economy jobs, which may limit or eliminate opportunities for others.<sup>4</sup> Many people have built their careers and livelihoods around fossil-fuel industry jobs, and many of these jobs have been and continue to be reliable, high-quality union jobs.<sup>5</sup> While providing assistance for displaced workers is outside the scope of this memo and associated model legislation, the historical success of the fossil fuel workforce in achieving decent wages, benefits and working conditions serves as an important backdrop for policy makers considering how to ensure that clean energy jobs can similarly, and perhaps even superiorly, be reliably high-paying jobs with robust benefits.

### **State Legislative Response**

---

<sup>1</sup> NAT'L ASS'N OF STATE ENERGY OFFICIALS & ENERGY FUTURES INITIATIVE, 2021 U.S. ENERGY AND EMPLOYMENT REPORT XII (2020), <https://static1.squarespace.com/static/5a98cf80ec4eb7c5cd928c61/t/5ee78423c6fcc20e01b83896/1592230956175/USEER+2020+0615.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> DEPARTMENT OF ENERGY, UNITED STATES ENERGY & EMPLOYMENT REPORT 39 (2021), <https://www.energy.gov/sites/default/files/2021-07/USEER%202021%20Main%20Body.pdf>

<sup>4</sup> See Legal Pathways to Deep Decarbonization in the United States, Ch. 24, App A at 638 (“LPDD”).

<sup>5</sup> In 2019, for example, the natural gas electric power generation industry employed 121,812 workers, and eleven percent of these employees were unionized, compared to 6.2 percent of national private sector employees. See Nat'l Ass'n of State Energy Officials & Energy Futures Initiative, *supra* note 1, at 72-73. Similarly, in the same year, coal electric power generation employed 79,711 workers and ten percent of these employees were unionized. See *id.* at 69 – 70.

In order to promote the continued growth of the clean energy economy and ensure that this growth creates (a) secure, high quality jobs that promote equity and social well-being, (b) stable labor markets, and (c) timely and reliable construction, maintenance, repair and operation systems, state policy-makers can take action now to build occupational wage and benefit standards and apprentice training requirements into their existing and upcoming clean energy programs.

The majority of states across the country already have acted to promote clean energy. Thirty states and the District of Columbia currently have a Renewable Portfolio Standard, requiring that utilities meet the electricity needs of their customers with certain percentages of renewable power.<sup>6</sup> At least twenty-five states have mandatory statewide energy efficiency resource standards as well.<sup>7</sup> Further, in addition to federal clean energy tax incentives, many states operate their own clean energy tax incentives or administer their own grant programs to encourage clean energy development.

Within each of these types of programs and state approaches to support clean energy are opportunities to incorporate strong and enforceable labor standards. Clean energy grants or tax incentives can be conditioned on employers paying certain wages and benefits or entering into collectively bargained project labor agreements. Exemptions could be built into taxes or regulations for those who adhere to certain state labor standards. Occupational wage and benefit standards could also be built directly into renewable portfolio standards, so that utilities would be required to only purchase, or purchase a percentage of power, from projects that guarantee high-quality jobs.

### **Occupational Wage and Benefit Standards to Ensure High Quality Jobs**

In order to make such actions effective, policy makers will have to require that clean energy projects be constructed, maintained, repaired and operated by contractors who guarantee their workforces high quality wages, benefits, apprenticeship training and job security, and who meet procurement standards for responsible contracting.

One approach, which has already been used in multiple contexts, and has been cited by labor groups as the “gold standard” is to require that clean energy projects be installed, maintained, repaired and operated pursuant to Project Labor Agreements (“PLAs”) or Community Workforce Agreements (“CWAs”).<sup>8</sup>

PLAs are pre-hire collective bargaining agreements between an employer and a labor union or group of labor unions, which typically apply to workers in multiple trades who are

---

<sup>6</sup> DSIRE, RENEWABLE PORTFOLIO STANDARDS AND CLEAN ENERGY STANDARDS (2020), <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>

<sup>7</sup> DSIRE, ENERGY EFFICIENCY RESOURCE STANDARDS (AND GOALS) (2021), [https://ncsolarcen-prod.s3.amazonaws.com/wp-content/uploads/2021/09/Energy-Efficiency-Resource-Standards\\_Sept-2021.pdf](https://ncsolarcen-prod.s3.amazonaws.com/wp-content/uploads/2021/09/Energy-Efficiency-Resource-Standards_Sept-2021.pdf)

<sup>8</sup> See BLUEGREEN ALLIANCE, STATE-BASED POLICIES TO BUILD A CLEANER, SAFER, MORE EQUITABLE ECONOMY, A POLICY TOOLKIT 6 (2020) [https://www.bluegreenalliance.org/wp-content/uploads/2020/07/StatePolicyToolkit\\_Report2020\\_vFINAL.pdf](https://www.bluegreenalliance.org/wp-content/uploads/2020/07/StatePolicyToolkit_Report2020_vFINAL.pdf)

employed on a construction project. CWAs are similar; however, community organizations can also be part of negotiating these agreements.<sup>9</sup>

Another approach is to require adherence to “prevailing” rates of wages and benefits set by a state government as a floor that contractors and subcontractors must pay for each occupation on a project, based on local or regional collective bargaining agreements for those occupations.<sup>10</sup> Prevailing wage and benefit requirements are commonplace and well understood already by developers across the country, having been mandated by state laws for public work projects throughout the twentieth century.

In addition to requiring compliance with PLAs, CWAs and prevailing wage and benefit standards, legislators could also require clean energy developers to use contractors and subcontractors who (a) satisfy state and local procurement laws restricting public contracts to “responsible contractors” who have demonstrated their reliability, integrity and competence, and (b) have registered apprenticeship training programs that provide high-level job training for their employees and thus assure that facilities are structurally sound and timely built.

To best achieve compliance with occupational wage and benefit standards, a combination of PLAs, CWAs, prevailing wage and benefit standards, responsible contractor standards, and registered apprenticeship training programs should all be incorporated into clean energy policies.

### State Examples

Some states already have acted. Since 2013, **New Jersey** has required developers of solar projects one megawatt or greater that receive State Renewable Energy Credits to pay prevailing wages and benefits to construction workers on such projects.<sup>11</sup>

**New York** has passed a law expanding the definition of “public works construction projects” – which require the payment of prevailing wages and benefits – to include both projects that are publicly funded, and projects with total construction costs exceeding \$5 million that receive 30 percent or more of those costs from public funds (including savings from reduced taxes).<sup>12</sup> That law, which takes effect on January 1, 2022, will cover publicly-assisted renewable energy systems with capacities of more than 5 megawatts.<sup>13</sup> For states that offer significant renewable energy incentives and grant programs, this approach provides a straightforward path to achieving labor equity on renewable energy projects.

In 2018, the **New York** Public Service Commission issued an Executive Order allowing a state agency to require both PLAs and prevailing wage and benefit standards in contracts for

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 8; *see also* WASH. REV. CODE § 82.08.962 (2021)

<sup>11</sup> New Jersey state law defines State Renewable Energy Credits for projects one megawatt or greater as “Board of Public Utilities financial assistance.” This in turn triggers prevailing wage requirements. *See* New Jersey Statutes Title 48 §§ 3-87(t)(1), 2-29.47

<sup>12</sup> N.Y. LAB. LAW § 224-a (Consol. 2021); *see also* Stephen D. Rosemarino and Chad J. Caplan, New York State Bar Association, *New York to Require Contractors to Pay Prevailing Wages on Certain Private Projects* (June 12, 2020), <https://nysba.org/new-york-to-require-contractors-to-pay-prevailing-wages-on-certain-private-projects/>

<sup>13</sup> N.Y. LAB. LAW § 224-a(4)(g)

construction and operation of offshore wind projects on Long Island.<sup>14</sup> In support of that initiative, the Commission emphasized that economic development of this “new industry” should take “the form of high-quality employment opportunities,” noting specifically that “a PLA helps to assure timely compliance with contract terms and delivery of power.”<sup>15</sup>

In 2019, several states incorporated occupational wage, benefit and other standards into publicly-assisted renewable energy legislation. **Connecticut** passed a bill authorizing the development of offshore wind resources, which required developers participating in the bidding process to engage in “good faith negotiation of a project labor agreement.”<sup>16</sup> **Colorado** passed legislation requiring general contractors working on public works projects to certify that the contractors and sub-contractors conducting certain types of skilled work<sup>17</sup> on such projects have participated in an apprenticeship training program<sup>18</sup> and exempting from certain regulatory requirements utilities that agree “to use a project labor agreement for construction or expansion of a generation facility.”<sup>19</sup> **Maine**’s Legislature enacted a law requiring that its state climate action plan include policies regarding workforce development and educational opportunities, including “opportunities for training and retraining workers and the development of apprenticeship programs.”<sup>20</sup> **Maryland**’s Clean Energy Jobs Act of 2019 amended the state’s labor and employment law to require the state’s “Clean Energy Workforce Account” to provide grants supporting workforce development programs, including requiring grant applicants to have a PLA and to pay workers prevailing wages and benefits.<sup>21</sup>

Also in 2019, **Washington** passed the Clean Energy Transformation Act, which established a 75 percent sales tax remittance for certain renewable energy generation projects that “compensate workers at prevailing wages determined by collective bargaining agreements,” and a 100 percent sales tax remittance for such projects that use a PLA or CWA.<sup>22</sup> That law also required that, in order to receive those remittances, the party constructing the facility must satisfy several responsible contractor benchmarks, which include: 21 percent of contracts awarded to women-, minority- or veteran-owned businesses; 15 percent of total labor hours performed by registered apprentices; 35 percent of total labor hours performed by local residents (20 percent in

---

<sup>14</sup> STATE OF NEW YORK PUBLIC SERVICE COMMISSION, CASE 18-E-0071, ORDER ESTABLISHING OFFSHORE WIND STANDARD AND FRAMEWORK FOR PHASE I PROCUREMENT 45, 50 (July 12, 2018)

<sup>15</sup> *Id.* at 50

<sup>16</sup> See BlueGreen Alliance, *supra* note 8, at 14; see also An Act Concerning the Procurement of Energy Derived from Offshore Wind, Pub. Act No. 19-71 §1(2) (2019), <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00071-R00HB-07156-PA.pdf>

<sup>17</sup> This includes “all mechanical, sheet metal, fire suppression, sprinkler fitting, electrical and plumbing work required” on a project. See COLO. REV. STAT. ANN. § 24-92-115(1)(a)(2019)

<sup>18</sup> See *id.*

<sup>19</sup> See BlueGreen Alliance, *supra* note 8, at 14, see also S.B. 19-236 § 7(c) (2019), [https://leg.colorado.gov/sites/default/files/2019a\\_236\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2019a_236_signed.pdf)

<sup>20</sup> ME. REV. STAT. TIT. 38, § 577.4 (2019)

<sup>21</sup> S.B. 516 (Md. 2019), <https://legiscan.com/MD/text/SB516/2019>

<sup>22</sup> WASH. REV. CODE § 82.08.962; see also Clean/Renewable Energy Program, WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES, <https://lni.wa.gov/licensing-permits/electrical/electrical-installation-information/clean-energy-projects> (last visited Dec. 10, 2021).

rural counties); all labor paid at least prevailing rates; and no past violations of federal, state or local state wage and hour laws.<sup>23</sup>

In 2020, **Virginia** enacted a law requiring utilities building offshore wind facilities to submit plans detailing their options for hiring local workers, as well as opportunities to prioritize the hiring and apprenticeship of local workers, veterans, and historically economically disadvantaged communities.<sup>24</sup>

In 2021, **Oregon** passed a law requiring electricity providers to reduce greenhouse gas emissions by 80 percent by 2030 and 100 percent by 2040, and requiring large clean energy project developers to pay prevailing wages and benefits, and to either use a PLA or attest that during periods of construction all contractors and subcontractors will (1) participate in an apprenticeship program with high graduation rates, (2) adhere to all responsible contractor labor standards, (3) establish and execute plans for hiring women, minority individuals, veterans and people with disabilities, and (4) have policies in place designed to limit or prevent workplace harassment and discrimination, and that promote inclusion.<sup>25</sup>

### **Model Legislation and Analysis**

Incorporating occupational wage and benefit standards into energy efficiency and renewable energy laws will be a state-specific exercise based on the structure of those programs and the types of statutes, regulations, and incentives already in effect in those states.

Section 2 of the model legislation accompanying this memo is therefore drafted based on the Washington model, as the most universally applicable. Offering a tax incentive for renewable energy projects that use certain labor standards can stand alone without reference to specific existing renewable energy programs.

Section 3 of the model legislation, on the other hand, is generically drafted to demonstrate how robust labor standards can be lifted out and applied to other types of statutes, regulations and incentives currently governing energy projects in the state. Determining what will be the most effective locus for these standards will depend on what types of incentive programs or state resources developers rely on in a particular state, what regulatory relief would be the most appealing to developers in that state, and what political support will be available from an array of stakeholders, including project developers, organized labor, climate activists, good government advocates, and electricity end users.

Another policy option would be to incorporate mandatory labor standards directly into renewable portfolio standards, i.e., requiring that projects use renewable resources and adhere to defined labor standards in order to be deemed eligible for use by a utility in meeting an RPS goal. This approach has not been incorporated into this draft, although the criteria for determining eligibility could be lifted out of Sections 2 and 3. To the drafters' knowledge, this

---

<sup>23</sup> See Clean/Renewable Energy Program, WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES, <https://lni.wa.gov/licensing-permits/electrical/electrical-installation-information/clean-energy-projects> (last visited Dec. 10, 2021).

<sup>24</sup> H.B. 1526 (Va. 2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1526>

<sup>25</sup> H.B. 2021, Reg. Sess. (Or. 2021),

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2021/Enrolled>

approach has not yet been attempted by a state legislature, whereas multiple states have successfully grafted labor standards onto incentive programs.