

117TH CONGRESS
2D SESSION

H. R. 7439

To promote United States energy security and independence by bolstering renewable energy supply chains in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 2022

Ms. BUSH (for herself, Mr. BOWMAN, Ms. TLAIB, Mr. TAKANO, Mr. GARCÍA of Illinois, Mr. HUFFMAN, Mr. ESPAILLAT, Mr. GRIJALVA, Mr. JONES, Mr. KHANNA, Ms. PRESSLEY, Mr. LEVIN of Michigan, Ms. NORTON, Ms. OCASIO-CORTEZ, Mrs. WATSON COLEMAN, Ms. CLARKE of New York, Mr. NADLER, Ms. NEWMAN, Ms. BARRAGÁN, Ms. LEE of California, Mr. CROW, Ms. OMAR, Ms. BASS, Ms. SHERRILL, Mr. CASTEN, Ms. JAYAPAL, Mrs. CAROLYN B. MALONEY of New York, Mr. COHEN, Mr. NEGUSE, and Mr. CARSON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Financial Services, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote United States energy security and independence by bolstering renewable energy supply chains in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Security and
5 Independence Act of 2022”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COVERED ENERGY-EFFICIENCY OR RENEW-
4 ABLE ENERGY SYSTEM OR TECHNOLOGY.—The term
5 “covered energy-efficiency or renewable energy sys-
6 tem or technology” means—

7 (A) a renewable energy generation system;

8 (B) a renewable energy storage system;

9 (C) an energy-efficiency system (including
10 a heat pump);

11 (D) an energy-efficiency technology;

12 (E) an electric transportation system;

13 (F) a renewable energy technology; and

14 (G) an energy storage technology utilizing
15 energy generated from a renewable energy
16 source.

17 (2) DIRECT LOAN.—

18 (A) IN GENERAL.—The term “direct loan”
19 means a disbursement of funds by the Federal
20 Government to a non-Federal borrower under a
21 contract that requires the repayment of those
22 funds with or without interest.

23 (B) INCLUSION.—The term “direct loan”
24 includes the purchase of, or participation in—

25 (i) a loan made by another lender; or

1 (ii) a financing arrangement that de-
2 fers payment for more than 90 days, in-
3 cluding the sale of a Government asset on
4 credit terms.

5 (3) ELIGIBLE ENTITY.—The term “eligible enti-
6 ty” means a private entity, including a manufac-
7 turer, or a partnership of private entities.

8 (4) ENVIRONMENTAL JUSTICE COMMUNITY.—
9 The term “environmental justice community” means
10 a community with significant representation of 1 or
11 more communities of color, low-income communities,
12 or Tribal or indigenous communities that experience,
13 or are at risk of experiencing, higher or more ad-
14 verse human health or environmental effects as com-
15 pared to other communities.

16 (5) HEAT PUMP.—The term “heat pump”
17 means a device that—

18 (A) transfers heat from a colder area to a
19 hotter area by using mechanical energy; and

20 (B) is used to maintain a safe, com-
21 fortable, and affordable temperature in a build-
22 ing.

23 (6) PUBLIC HEAT PUMP.—The term “public
24 heat pump” means a heat pump that is owned or
25 operated by—

1 (A) a unit of Federal, State, or local gov-
2 ernment; or

3 (B) a cooperatively owned utility.

4 (7) RENEWABLE ENERGY.—The term “renew-
5 able energy” means energy generated from a renew-
6 able energy source.

7 (8) RENEWABLE ENERGY SOURCE.—The term
8 “renewable energy source” means wind, solar, tidal,
9 wave, or geothermal energy.

10 **SEC. 3. FINDING.**

11 Congress finds that it is in the interests of the United
12 States—

13 (1) to have a viable domestic manufacturing
14 supply chain for components of covered energy-effi-
15 ciency and renewable energy systems and tech-
16 nologies; and

17 (2) to reduce the reliance of United States
18 manufacturers on components of covered energy-effi-
19 ciency and renewable energy systems and tech-
20 nologies made in foreign countries.

1 **SEC. 4. USE OF DEFENSE PRODUCTION ACT OF 1950 AU-**
2 **THORITIES TO SUPPORT DOMESTIC INDUS-**
3 **TRIAL BASE AND MANUFACTURING CAPA-**
4 **BILITIES FOR RENEWABLE ENERGY TECH-**
5 **NOLOGIES.**

6 (a) RENEWABLE ENERGY TECHNOLOGIES AS STRA-
7 TEGIC AND CRITICAL MATERIALS.—Section 106 of the
8 Defense Production Act of 1950 (50 U.S.C. 4516) is
9 amended—

10 (1) by inserting “(a)” before “For purposes”;

11 and

12 (2) by adding at the end the following:

13 “(b) The designation of energy as a strategic and
14 critical material under subsection (a) includes the designa-
15 tion of covered energy-efficiency and renewable energy sys-
16 tems and technologies (as defined in section 2 of the En-
17 ergy Security and Independence Act of 2022) as strategic
18 and critical materials.”.

19 (b) APPROPRIATION.—

20 (1) IN GENERAL.—In addition to amounts oth-
21 erwise available, there is appropriated for fiscal year
22 2022, out of any money in the Treasury not other-
23 wise appropriated, \$100,000,000,000 to the Presi-
24 dent to carry out subsection (c).

1 (2) AVAILABILITY OF AMOUNTS.—Amounts ap-
2 propriated under paragraph (1) shall remain avail-
3 able until September 30, 2032.

4 (c) SUPPORT FOR DOMESTIC INDUSTRIAL BASE AND
5 MANUFACTURING CAPABILITIES.—

6 (1) IN GENERAL.—The President shall use the
7 authorities under titles I and III and section 708(c)
8 of the Defense Production Act of 1950 (50 U.S.C.
9 4501 et seq.) to establish, maintain, protect, or re-
10 store the domestic industrial base and manufac-
11 turing capabilities for covered energy-efficiency and
12 renewable energy systems and technologies, includ-
13 ing by providing loan guarantees, loans, purchase
14 agreements, and grants to manufacturing entities to
15 expand the domestic productive capacity of those en-
16 tities and repurpose equipment to meet the manufac-
17 turing demands of such systems and technologies.

18 (2) REQUIREMENTS.—In carrying out para-
19 graph (1), the President shall—

20 (A) identify the domestic industrial base
21 needs to transform the United States domestic
22 energy system into a 100 percent renewable en-
23 ergy system;

1 (B) use the authorities under title I of the
2 Defense Production Act (50 U.S.C. 4501 et
3 seq.)—

4 (i) to prioritize contracts and allocate
5 materials, services, and facilities to achieve
6 the goal described in subparagraph (A);
7 and

8 (ii) to allocate the strategic and crit-
9 ical materials described in section 106(b)
10 of that Act, as added by subsection (a), in
11 a manner that prioritizes—

12 (I) environmental justice commu-
13 nities first;

14 (II) publicly owned systems of re-
15 newable energy;

16 (III) systems that reduce utility
17 and energy costs in the United States;
18 and

19 (IV) Federal agencies whose
20 buildings can be used as public
21 sources of solar energy for environ-
22 mental justice communities;

23 (C) take the actions described in subpara-
24 graph (B) in tandem with existing financial and
25 technical assistance programs of the Depart-

1 ment of Energy, the Department of Transpor-
2 tation, and such other agencies as the President
3 considers appropriate; and

4 (D) coordinate with the task force estab-
5 lished under section 5.

6 **SEC. 5. DOMESTIC RENEWABLE ENERGY INDUSTRIAL BASE**
7 **TASK FORCE.**

8 (a) IN GENERAL.—The President shall establish a
9 domestic renewable energy industrial base task force that
10 includes—

11 (1) manufacturers, engineers, scientists, and
12 planning experts in the fields of—

13 (A) equitable energy; and

14 (B) energy democracy and transportation
15 design;

16 (2) environmental justice community leaders;

17 (3) labor unions;

18 (4) the Secretary of Energy, the Secretary of
19 Transportation, and the Secretary of Labor;

20 (5) staff of the National Laboratories (as de-
21 fined in section 2 of the Energy Policy Act of 2005
22 (42 U.S.C. 15801)); and

23 (6) other relevant Federal, State, and local
24 agencies.

1 (b) DUTIES.—The task force established under sub-
2 section (a) shall develop a manufacturing and allocation
3 plan—

4 (1) to establish, maintain, protect, and restore
5 a domestic industrial base and manufacturing capa-
6 bilities for covered energy-efficiency and renewable
7 energy systems and technologies;

8 (2) to reach the goal of a 100 percent renew-
9 able energy system as soon as possible, using the
10 best available science and technologies;

11 (3) to prioritize distributed energy resources
12 and storage to boost climate resilience and equity;

13 (4) to make an equitable allocation of Federal
14 renewable energy investments and assistance, in
15 partnership with environmental justice communities
16 and public entities; and

17 (5) to ensure that the domestic industrial base
18 of covered energy-efficiency and renewable energy
19 systems and technologies creates and maintains
20 high-quality jobs that are represented by labor orga-
21 nizations.

22 (c) APPROPRIATIONS.—In addition to amounts other-
23 wise available, there is appropriated, out of any money in
24 the Treasury not otherwise appropriated, \$25,000,000 to

1 the President to carry out this section for fiscal year 2022,
2 to remain available until September 30, 2031.

3 **SEC. 6. RENEWABLE ENERGY GENERATION SYSTEM COM-**
4 **PONENT MANUFACTURING SUPPLY CHAIN**
5 **ASSISTANCE.**

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of enactment of this Act, the Secretary of Energy
8 (referred to in this section as the “Secretary”) shall estab-
9 lish a program (referred to in this section as the “pro-
10 gram”) to provide financial assistance, including grants,
11 direct loans, and loan guarantees, to eligible entities to
12 carry out projects—

13 (1) to construct new facilities that manufacture
14 components of covered energy-efficiency and renew-
15 able energy systems and technologies; and

16 (2) to retool, retrofit, or expand existing facili-
17 ties that manufacture, or have the ability to manu-
18 facture, components of covered energy-efficiency and
19 renewable energy systems and technologies.

20 (b) APPLICATION.—To be eligible to receive financial
21 assistance under the program, an eligible entity shall sub-
22 mit to the Secretary an application at such time, in such
23 manner, and containing such information as the Secretary
24 may require.

1 (c) PRIORITY.—In providing financial assistance
2 under the program, the Secretary shall give priority to
3 projects that—

4 (1) have the potential to benefit an environ-
5 mental justice community, including by reducing the
6 pollution and emissions within, and the utility costs
7 of, such a community;

8 (2) are strategically located near manufacturers
9 of components of covered energy-efficiency and re-
10 newable energy systems and technologies to create a
11 geographic concentration of those manufacturers in
12 the manufacturing supply chain;

13 (3) have potential to directly and indirectly cre-
14 ate domestic jobs, including jobs for low-income
15 communities, dislocated workers, and workers from
16 groups that are underrepresented in the manufac-
17 turing industry, including formerly incarcerated
18 workers;

19 (4) will result in economic development or eco-
20 nomic diversification in economically distressed re-
21 gions or localities; and

22 (5) do not expedite or fast track any applicable
23 environmental review processes.

24 (d) DIRECT LOAN CONDITIONS.—A direct loan made
25 under the program shall—

1 (1) bear interest at a rate that does not exceed
2 a level that the Secretary determines to be appro-
3 priate; and

4 (2) be subject to such other terms and condi-
5 tions as the Secretary determines to be appropriate.

6 (e) COST SHARING FOR GRANTS.—Section 988(c) of
7 the Energy Policy Act of 2005 (42 U.S.C. 16352(c)) shall
8 apply to a grant made under the program.

9 (f) CONDITIONS OF RECEIPT OF FINANCIAL ASSIST-
10 ANCE.—

11 (1) REQUIRED AGREEMENT.—An eligible entity
12 awarded financial assistance under the program
13 shall enter into an agreement that specifies that,
14 during the 5-year period immediately following the
15 award of the financial assistance—

16 (A) the eligible entity will not—

17 (i) repurchase an equity security of
18 the eligible entity or any parent company
19 of the eligible entity that is listed on a na-
20 tional securities exchange, except to the ex-
21 tent required under a contractual obliga-
22 tion that is in effect as of the date of en-
23 actment of this Act;

24 (ii) outsource or offshore jobs to a lo-
25 cation outside of the United States; or

1 (iii) abrogate existing collective bar-
2 gaining agreements; and

3 (B) the eligible entity will remain neutral
4 in any union organizing effort.

5 (2) FINANCIAL PROTECTION OF GOVERN-
6 MENT.—

7 (A) IN GENERAL.—Financial assistance
8 may not be awarded under the program to an
9 eligible entity unless—

10 (i)(I) the eligible entity has issued se-
11 curities that are traded on a national secu-
12 rities exchange; and

13 (II) the Secretary of the Treasury re-
14 ceives a warrant or equity interest in the
15 eligible entity; or

16 (ii) in the case of an eligible entity
17 other than an eligible entity described in
18 clause (i)(I), the Secretary of the Treasury
19 receives, in the discretion of the Secretary
20 of the Treasury—

21 (I) a warrant or equity interest
22 in the eligible entity; or

23 (II) a senior debt instrument
24 issued by the eligible entity.

1 (B) TERMS AND CONDITIONS.—The terms
2 and conditions of any warrant, equity interest,
3 or senior debt instrument received under sub-
4 paragraph (A)(ii) shall be set by the Secretary
5 and shall meet the following requirements:

6 (i) PURPOSES.—Such terms and con-
7 ditions shall be designed to provide for rea-
8 sonable participation by the Secretary, for
9 the benefit of taxpayers, in—

10 (I) equity appreciation in the
11 case of a warrant or other equity in-
12 terest; or

13 (II) a reasonable interest rate
14 premium, in the case of a debt instru-
15 ment.

16 (ii) AUTHORITY TO SELL, EXERCISE,
17 OR SURRENDER.—

18 (I) IN GENERAL.—For the pri-
19 mary benefit of taxpayers, the Sec-
20 retary may sell, exercise, or surrender
21 a warrant or any senior debt instru-
22 ment received under this paragraph.

23 (II) NO VOTING.—The Secretary
24 shall not exercise voting power with

1 respect to any shares of common
2 stock acquired under this paragraph.

3 (iii) SUFFICIENCY.—If the Secretary
4 determines that an eligible entity cannot
5 feasibly issue warrants or other equity in-
6 terests as required by this paragraph, the
7 Secretary may accept a senior debt instru-
8 ment in an amount and on such terms as
9 the Secretary determines appropriate.

10 (g) FREE, PRIOR, AND INFORMED CONSENT FOR IN-
11 DIGENOUS COMMUNITIES IN THE SITING PROCESS.—The
12 Secretary shall establish standards and procedural re-
13 quirements to secure free, prior, and informed consent of
14 Indian Tribes to the siting of projects carried out with
15 financial assistance under the program that affect Indian
16 land, water, livelihoods, and culture, including off-reserva-
17 tion treaty-reserved rights to hunting, fishing, gathering,
18 and protection of, and access to, sacred sites.

19 (h) PROHIBITION.—In carrying out the program, the
20 Secretary may not provide financial assistance for projects
21 that will source components of covered energy-efficiency
22 and renewable energy systems and technologies from, or
23 supply components of covered energy-efficiency and renew-
24 able energy systems and technologies to, entities that use

1 forced labor (as defined in section 307 of the Tariff Act
2 of 1930 (19 U.S.C. 1307)).

3 (i) STUDY AND REPORT.—Not later than 1 year after
4 the date of enactment of this Act, the Secretary shall con-
5 duct, and submit to Congress a report describing the re-
6 sults of, a study on—

7 (1) opportunities to convert fossil fuel infra-
8 structure into renewable energy infrastructure;

9 (2) gaps in the current United States manufac-
10 turing supply chains for covered energy-efficiency
11 and renewable energy systems and technologies; and

12 (3) benefits to the energy security of the United
13 States of onshoring supply chains for covered en-
14 ergy-efficiency and renewable energy systems and
15 technologies.

16 (j) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated to carry out this section
18 \$10,000,000,000 for the period of fiscal years 2023
19 through 2032.

20 **SEC. 7. WEATHERIZATION ASSISTANCE PROGRAM.**

21 Section 422 of the Energy Conservation and Produc-
22 tion Act (42 U.S.C. 6872) is amended—

23 (1) by striking the section designation and
24 heading and all that follows through “For the” and
25 inserting the following:

1 **“SEC. 422. APPROPRIATIONS.**

2 “For the”; and

3 (2) in the matter preceding paragraph (1), by
4 striking “are authorized to be appropriated—” and
5 all that follows through the period at the end of
6 paragraph (2) and inserting “is appropriated, out of
7 any funds in the Treasury not otherwise appro-
8 priated, \$3,000,000,000 for each of fiscal years
9 2023 through 2032.”.

10 **SEC. 8. PUBLIC HEAT PUMPS.**

11 In addition to amounts otherwise available, there is
12 appropriated for fiscal year 2022, out of any funds in the
13 Treasury not otherwise appropriated, \$10,000,000,000 to
14 the Secretary of Energy, acting through the Office of En-
15 ergy Efficiency and Renewable Energy, to procure and in-
16 stall public heat pumps, to remain available until Sep-
17 tember 30, 2032.

18 **SEC. 9. MINIMUM LABOR STANDARDS.**

19 (a) DEFINITIONS.—In this section:

20 (1) COVERED ENTITY.—The term “covered en-
21 tity” means an entity that directly or indirectly re-
22 ceives funds or assistance under a covered energy
23 program, without regard to the form, amount, or
24 type of Federal assistance provided.

25 (2) COVERED ENERGY PROGRAM.—The term
26 “covered energy program” means—

1 (A) a program authorized under this Act;

2 or

3 (B) the Weatherization Assistance Pro-
4 gram for Low-Income Persons established
5 under part A of title IV of the Energy Con-
6 servation and Production Act (42 U.S.C. 6861
7 et seq.).

8 (3) PROJECT LABOR AGREEMENT.—The term
9 “project labor agreement” means a pre-hire collec-
10 tive bargaining agreement with one or more labor
11 organizations that—

12 (A) establishes the terms and conditions of
13 employment for a specific construction project;
14 and

15 (B) is an agreement described in section
16 8(f) of the National Labor Relations Act (29
17 U.S.C. 158(f)).

18 (b) LABOR STANDARD REQUIREMENTS.—Notwith-
19 standing any other provision of law, a covered entity shall
20 comply with the labor standards under this section.

21 (c) PREVAILING WAGES.—A covered entity shall en-
22 sure the following:

23 (1) LABORERS AND MECHANICS.—Any laborer
24 or mechanic employed by the covered entity, or any
25 contractor or subcontractor in the performance of

1 work funded or assisted, in whole or in part, under
2 a covered energy program, shall be paid wages at
3 rates not less than those prevailing on work of a
4 similar character in the locality, as determined by
5 the Secretary of Labor under subchapter IV of chap-
6 ter 31 of title 40, United States Code (commonly
7 known as the “Davis-Bacon Act”). With respect to
8 the labor standards in this subsection, the Secretary
9 of Labor shall have the authority and functions set
10 forth in Reorganization Plan Numbered 14 of 1950
11 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of
12 title 40, United States Code.

13 (2) OTHER WORKERS.—All individuals em-
14 ployed by the covered entity, or any contractor or
15 subcontractor using funds or other assistance pro-
16 vided under a covered energy program, in the manu-
17 facture or furnishing of materials, supplies, articles,
18 or equipment shall be paid wages at rates not less
19 than employees performing similar work or in the
20 particular or similar industries or groups of indus-
21 tries currently operating in the locality in which the
22 materials, supplies, articles, or equipment are to be
23 manufactured or furnished, as determined by the
24 Secretary of Labor in accordance with sections 6501

1 through 6511 of title 41, United States Code (com-
2 monly known as the “Public Contracts Act”).

3 (d) LABOR-MANAGEMENT COOPERATION.—

4 (1) DEFINITIONS.—In this subsection:

5 (A) NLRA DEFINITIONS.—The terms
6 “employee”, “employer”, and “labor organiza-
7 tion” have the meanings given the terms in sec-
8 tion 2 of the National Labor Relations Act (29
9 U.S.C. 152).

10 (B) BOARD.—The term “Board” means
11 the National Labor Relations Board.

12 (2) IN GENERAL.—Notwithstanding any con-
13 trary provision of law, including the National Labor
14 Relations Act (29 U.S.C. 151 et seq.), paragraphs
15 (3) through (8) shall apply with respect to any cov-
16 ered entity that is an employer and any labor orga-
17 nization who represents or seeks to represent em-
18 ployees of such covered entity.

19 (3) LABOR PEACE.—Any employer that is a
20 covered entity shall recognize for purposes of collec-
21 tive bargaining a labor organization that dem-
22 onstrates that a majority of the employees in a unit
23 appropriate for bargaining who perform or will per-
24 form work funded or assisted, in whole or in part,
25 by a covered energy program have signed valid au-

1 thorizations designating the labor organization as
2 their bargaining representative and that no other
3 labor organization is currently certified or recognized
4 as the exclusive representative of any of the employ-
5 ees in the unit pursuant to the National Labor Rela-
6 tions Act (29 U.S.C. 151 et seq.). Upon such show-
7 ing of majority status, the employer shall notify the
8 labor organization and the Board that the employer
9 has determined that the labor organization rep-
10 resents a majority of the employees and that the em-
11 ployer is recognizing the labor organization as the
12 exclusive representative of the employees for the pur-
13 poses of collective bargaining pursuant to section 9
14 of such Act (29 U.S.C. 159).

15 (4) CERTIFICATION.—Should a dispute over
16 majority status or the appropriateness of the unit
17 arise between the employer and the labor organiza-
18 tion, either party may request that the Board inves-
19 tigate and resolve the dispute. If the Board finds
20 that a majority of the employees in a unit appro-
21 priate for bargaining has signed valid authorizations
22 designating the labor organization as their bar-
23 gaining representative and that no other individual
24 or labor organization is currently certified or recog-
25 nized as the exclusive representative of any of the

1 employees in the unit, the Board shall not direct an
2 election but shall certify the labor organization as
3 the representative described in section 9(a) of the
4 National Labor Relations Act (29 U.S.C. 159(a)).

5 (5) COMMENCEMENT OF BARGAINING.—Not
6 later than 10 days after receiving a written request
7 for collective bargaining from a recognized or cer-
8 tified labor organization, or within such period as
9 the parties agree upon, the labor organization and
10 employer shall meet and commence to bargain collec-
11 tively and shall make every reasonable effort to con-
12 clude and sign a collective bargaining agreement.

13 (6) MEDIATION.—If after the expiration of the
14 90-day period beginning on the date on which bar-
15 gaining is commenced, or such additional period as
16 the parties may agree upon, the parties have failed
17 to reach an agreement, either party may notify the
18 Federal Mediation and Conciliation Service of the
19 existence of a dispute and request mediation. When-
20 ever such a request is received, it shall be the duty
21 of the Service promptly to put itself in communica-
22 tion with the parties and to use its best efforts, by
23 mediation and conciliation, to bring them to agree-
24 ment.

1 (7) ARBITRATION.—If after the expiration of
2 the 30-day period beginning on the date on which
3 the request for mediation is made under paragraph
4 (6), or such additional period as the parties may
5 agree upon, the Federal Mediation and Conciliation
6 Service is not able to bring the parties to agreement
7 by conciliation, the Service shall refer the dispute to
8 a tripartite arbitration panel established in accord-
9 ance with such regulations as may be prescribed by
10 the Service, with one member selected by the labor
11 organization, one member selected by the employer,
12 and one neutral member mutually agreed to by the
13 parties. The labor organization and employer must
14 each select the members of the tripartite arbitration
15 panel within 14 days of the Service’s referral; if the
16 labor organization or employer fail to do so, the
17 Service shall designate any members not selected by
18 the labor organization or the employer. A majority
19 of the tripartite arbitration panel shall render a deci-
20 sion settling the dispute as soon as practicable and
21 not later than within 120 days of the selection of all
22 members of the panel, absent extraordinary cir-
23 cumstances or by agreement or permission of the
24 parties, and such decision shall be binding upon the
25 parties for a period of 2 years, unless amended dur-

1 ing such period by written consent of the parties.

2 Such decision shall be based on—

3 (A) the employer’s financial status and
4 prospects;

5 (B) the size and type of the employer’s op-
6 erations and business;

7 (C) the employees’ cost of living;

8 (D) the employees’ ability to sustain them-
9 selves, their families, and their dependents on
10 the wages and benefits they earn from the em-
11 ployer; and

12 (E) the wages and benefits other employers
13 in the same business provide their employees.

14 (8) CONTRACTORS AND SUBCONTRACTORS.—

15 Any employer that is a covered entity shall require
16 any contractor or subcontractor whose employees
17 perform or will perform work funded or assisted, in
18 whole or in part, by a covered energy program to
19 comply with the requirements set forth in para-
20 graphs (2) through (7).

21 (e) PROJECT LABOR AGREEMENT.—A covered entity
22 performing any construction project funded or assisted, in
23 whole or in part, by a covered energy program shall be
24 a party to, or, as applicable, require contractors and sub-

1 contractors in the performance of such project to be a
2 party to, a project labor agreement.

3 (f) LIMITS ON BACKGROUND CHECKS.—A covered
4 entity, and each contractor and subcontractor in the per-
5 formance of any work funded or assisted, in whole or in
6 part, by a covered energy program, shall not request or
7 otherwise consider the criminal history of an applicant for
8 employment before extending a conditional offer to the ap-
9 plicant, unless—

10 (1) a background check is otherwise required by
11 law;

12 (2) the position is for a Federal law enforce-
13 ment officer (as defined in section 115(c) of title 18,
14 United States Code) position; or

15 (3) the Secretary of Labor, in consultation with
16 the Secretary of Energy, certifies that precluding
17 criminal history prior to the conditional offer would
18 pose a threat to national security.

19 (g) EMPLOYEE STATUS.—A covered entity, and each
20 contractor and subcontractor of the covered entity in the
21 performance of any project funded or assisted, in whole
22 or in part, by a covered energy program, shall consider
23 an individual performing any service in such performance
24 as an employee (and not an independent contractor) of

1 the covered entity, contractor, or subcontractor, respec-
2 tively, unless—

3 (1) the individual is free from control and direc-
4 tion in connection with the performance of the serv-
5 ice, both under the contract for the performance of
6 the service and in fact;

7 (2) the service is performed outside the usual
8 course of the business of the covered entity, con-
9 tractor, or subcontractor, respectively; and

10 (3) the individual is customarily engaged in an
11 independently established trade, occupation, profes-
12 sion, or business of the same nature as that involved
13 in such service.

14 **SEC. 10. EQUITABLE ALLOCATION OF FUNDS.**

15 The President and the Secretary of Energy shall each
16 ensure that of the total amount of Federal support and
17 assistance provided under this Act by the President and
18 the Secretary of Energy, respectively, not less than 40 per-
19 cent shall be invested in environmental justice commu-
20 nities.

○