

Worker and Community Strong: Labor and Community Tools for New Mexico's Clean Energy Sector

Rachel Johanna Swanteson-Franz*

The golden era for workers' rights and strong labor unions appears to be a distant past, while the threat of climate change and the need for a rapid transition away from fossil fuels looms. That transition lies at the intersection of environmental and labor justice as advocates on both sides query how to confront the challenge of decarbonizing the economy while ensuring workers are not thrown into economic precarity. New Mexico is a place where these tensions collide—it has been a leader in promoting clean energy industries, yet its economy and workforce are heavily dependent on the oil and gas industry. Additionally, unlike some of its sister progressive states like California, New Mexico lacks a strong union presence. This raises a central question: How can New Mexico—and similarly situated states—build a clean energy industry that offers strong worker protections, livable wages, and robust benefits for clean energy workers and the communities near those projects?

This Article examines two tools that can bridge the union gap—Community Workforce Agreements (CWAs) and Community Benefit Agreements (CBAs). Through local examples of these agreements in action, this Article identifies the opportunities and challenges of both. The Article then reviews state clean energy legislation that either incentivizes or requires CWAs and CBAs for clean energy projects. Building on these models, it discusses multiple avenues New Mexico can pursue to push the energy transition forward while providing strong protections for workers and communities. Finally, this Article emphasizes that these tools are readily adaptable to other states and to other segments of the energy sector.

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INTRODUCTION

New Mexico has been one of the United States' leaders in prioritizing clean, net-zero emissions-aligned energy industries.¹ Yet New Mexico's economy and communities have historically relied on the profitable, but precarious, fossil fuel sector.² As New Mexico looks to promote more clean energy projects and clean energy jobs, this transition poses a major question, especially for a state that is so under-resourced: How can an energy transition occur while providing good jobs and equitable community benefits? Unions have long been, and continue to be, a valuable tool for workers to secure better benefits; however, over 80 percent of workers in the clean energy sector are not unionized.³ This means that New Mexico and comparable states risk decarbonizing the grid for the sake of the climate at the expense of the worker. This Article explores how Community Workforce Agreements (CWAs) and Community Benefit Agreements (CBAs) can provide important benefits for both workers and their communities, supporting a just transition⁴ when unionization is not an immediate option.

A diverse portfolio of worker protection strategies is essential in a state like New Mexico, where low unionization rates leave significant gaps in labor standards.⁵ Good jobs⁶ are considered the foundation of "inclusive, resilient and fair societies," yet standard market forces do not generate them; strong public

1. See Tom Solomon, *Transition to Clean Energy: How Is New Mexico Doing?*, 350NM, <https://350newmexico.org/clean-energy-in-new-mexico/> (last visited Jan. 15, 2026) [<https://perma.cc/7PZK-RARP>].

2. See DANIEL RAIMI & ZACH WHITLOCK, RES. FOR THE FUTURE, SAVE IT OR SPEND IT? HOW NEW MEXICO, PENNSYLVANIA, AND TEXAS MANAGE OIL AND GAS REVENUES FOR THE FUTURE 5–6, 9–11 (2025), https://media.rff.org/documents/Report_25-17.pdf [<https://perma.cc/RN2W-2QW4>].

3. See OFF. OF ENERGY JOBS, U.S. DEP'T OF ENERGY, UNITED STATES ENERGY & EMPLOYMENT REPORT 2024 viii (2024) [hereinafter 2024 ENERGY & EMPLOYMENT REPORT], <https://www.energy.gov/sites/default/files/2024-08/2024%20USEER%20FINAL.pdf> [<https://perma.cc/5LLD-FHHG>].

4. *What Is Just Transition? And Why Is It Important?*, UNITED NATIONS DEV. PROGRAMME: CLIMATE PROMISE (Nov. 3, 2022), <https://climatepromise.undp.org/news-and-stories/what-just-transition-and-why-it-important> [<https://perma.cc/89B2-DPXN>] (noting that definitions of just transition vary but the International Labour Organization says it is "[g]reening the economy in a way that is as fair and inclusive as possible to everyone concerned, creating decent work opportunities and leaving no one behind"); *Just Transition*, BUREAU OF INT'L LAB. AFFS., U.S. DEPT. OF LAB., <https://www.dol.gov/agencies/ilab/just-transition> (last visited Nov. 3, 2024) [<https://perma.cc/WHA6-L43V>] (noting that the just transition must "[c]enter[] workers in the climate transition . . ."). Each community should have local definitions that inform their actions, but for consistency, when the Article references "just transition," it will use the definition used by the International Labour Organization.

5. See Rachel Moskowitz, N.M. DEP'T OF WORKFORCE SOLS., NEW MEXICO DATA FOCUS: UNION MEMBERSHIP 12, (vol. 53, no. 2 2024) [hereinafter Moskowitz, UNION MEMBERSHIP], https://www.dws.state.nm.us/Portals/0/DM/LMI/LMR/2024/LMR_2024_Feb.pdf [<https://perma.cc/SKV4-T38Z>].

6. There is no one definition for "good jobs," so for consistency, this Article uses a general definition informed by the author's opinion and union goals. See *infra* note 18 and accompanying text for the definition.

regulation is therefore indispensable.⁷ CWAs are community-centered Project Labor Agreements, which are a type of collective bargaining agreement unique to the construction industry that applies for the duration of a project and covers both union and non-union members.⁸ CBAs are contracts negotiated between community organizations or between local governments and developers that can include labor provisions and often provide direct benefits to local governments or organizations for community projects like “improv[ing] housing, employment options, and recreational and cultural facilities.”⁹ Together, these tools can provide viable mechanisms for establishing the working conditions necessary for a more just and equitable society.

Generally, discussions around improving labor protections in the clean energy transition involve conversations about unionization.¹⁰ The focus on unions is understandable—they are considered the gold standard for improving working conditions by shifting power to workers, allowing them to bargain for a just workplace.¹¹ Yet, while federal support for unions was at a record high under the Biden Administration,¹² unions still faced strong opposition across the

7. Steffica Warwick, *12 Experts Explain Why Good Job Creation Is Needed and What Leaders Can Do About It*, WORLD ECON. F., <https://www.weforum.org/stories/2023/09/12-experts-explain-world-needs-more-good-jobs-leaders> (last updated June 3, 2025) [<https://perma.cc/H3YM-2RQB>] (quoting and summarizing Lisa Sachs and Sangheon Lee).

8. U.S. DEP’T OF LAB., PROJECT LABOR, COMMUNITY WORKFORCE, AND COMMUNITY BENEFITS AGREEMENTS RESOURCE GUIDE, [hereinafter U.S. DEP’T OF LAB., AGREEMENTS], https://www.dol.gov/sites/dolgov/files/OPA/GoodJobs/Docs/Project_Labor_Community_Workforce.pdf (last visited Sept. 26, 2024) [<https://perma.cc/GMX3-ZH3Z>].

9. PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 32.15 (5th ed. 2024); see U.S. DEP’T OF LAB., AGREEMENTS, *supra* note 8.

10. See, e.g., RITA CLIFFTON, MALKIE WALL, SAM RICKETTS, KEVIN LEE, JESSICA ECKDISH & KARLA WALTER, CTR. FOR AM. PROGRESS, THE CLEAN ECONOMY REVOLUTION WILL BE UNIONIZED: A ROADMAP FROM STATES ON CREATING GOOD, UNION JOBS TO BUILD THE CLEAN ENERGY ECONOMY 4 (2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/06/Clean-Economy-Revolution.pdf> [<https://perma.cc/72BV-93NP>]; Alejandro Calderon, *Foundations of the Future: Labor Unions and the Clean Energy Transition*, CARBON ACTION ALL. (July 25, 2024) <https://carbonactionalliance.org/news-events/foundations-of-the-future-labor-unions-and-the-clean-energy-transition> [<https://perma.cc/PFT8-H6Z3>]; *The Clean Economy Must Be Unionized*, BLUEGREEN ALL. (Aug. 31, 2023), <https://www.bluegreenalliance.org/resources/the-clean-economy-must-be-unionized> [<https://perma.cc/FYW6-JBLQ>].

11. See Calderon, *supra* note 10; Charles B. Craver, *Why Labor Unions Must [and Can] Survive*, 1 U. PA. J. LAB. & EMP. L. 15, 19 (1998) (discussing the purpose of the National Labor Relations Act to combat the unequal economic power between employers and employees).

12. See Daniel Wiessner, *U.S. Union Organizing, and Unions’ Election Win Rate, Is Surging*, NLRB SAYS, REUTERS (July 17, 2024), <https://www.reuters.com/legal/litigation/us-union-organizing-unions-election-win-rate-is-surging-nlrbsays-2024-07-17> [<https://perma.cc/AU8U-SXFE>]; see also *Workers at Georgia School Bus Maker Blue Bird Approve Their First Union Contract*, AP NEWS (May 24, 2024), <https://apnews.com/article/school-bus-contract-blue-bird-4dbd2d08fd9fd57c0830417e5f484ff> [<https://perma.cc/QH96-A93C>]; *Statement from President Joe Biden on Increased Worker Organizing*, WHITE HOUSE (Oct. 15, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/10/15/statement-from-president-joe-biden-on-increased-worker-organizing> [<https://perma.cc/KC28-C48T>].

country.¹³ That opposition now has a strong front under the second Trump administration that is generally supportive of policies and practices undermining unions and workers' rights.¹⁴ While unionization within the clean energy sector must remain the primary goal, a resilient labor and climate movement should make strategic use of CWAs and CBAs to address worker protections in the interim. These tools will be especially beneficial in a time when advocates for climate and labor justice will likely have to advance their efforts at the state level instead of the federal level.

Additionally, the tools discussed here can help ensure that community members, in addition to workers, can participate in and benefit from the clean energy transition.¹⁵ While communities near extractive industries often receive economic benefits from jobs, taxes, and private industry funding for community services, they frequently bear the brunt of the environmental consequences from those industries.¹⁶ A just transition from the fossil fuel sector must therefore provide both good clean energy jobs *and* tangible community benefits without the risks associated with fossil fuel extraction.

Proposing CWAs and CBAs as tools for a just transition is not a novel approach.¹⁷ However, this Article seeks to augment the existing literature by (1)

13. Celine McNicholas, Margaret Poydock & Marc Edayadi, *Employers Regularly Engage in Tactics to Suppress Unions*, ECON. POL'Y INST. (Mar. 28, 2023), <https://www.epi.org/blog/employers-regularly-engage-in-tactics-to-suppress-unions-examples-at-starbucks-amazon-and-google-illustrate-employers-anti-union-playbook> [https://perma.cc/2KWD-KHBQ].

14. See Samantha Sanders, *Three Ways Workers' Rights Are on the Chopping Block Under President Trump*, ECON. POL'Y INST. (Dec. 6, 2024), <https://www.epi.org/blog/three-ways-workers-rights-are-on-the-chopping-block-under-president-trump-judging-by-the-first-trump-administration-workers-and-unions-are-set-to-face-new-attacks-and-a-rollback-of-rights> [https://perma.cc/9KCA-MG2S]; Aurelia Glass, *The Trump Administration Ended Collective Bargaining for 1 Million Federal Workers*, CTR. FOR AM. PROGRESS (May 22, 2025), <https://www.americanprogress.org/article/the-trump-administration-ended-collective-bargaining-for-1-million-federal-workers> [https://perma.cc/9B32-392W]; *Trump's Anti-Worker Record*, COMMC'NS WORKERS OF AM., <https://cwa-union.org/trumps-anti-worker-record> (last visited Jan. 24, 2026) [https://perma.cc/5MQB-YW59].

15. See generally Christy Goldfuss, *Not Just Talk: Next-Level Community Engagement in Renewable Energy*, NAT. RES. DEF. COUNCIL (July 12, 2024), <https://www.nrdc.org/bio/christy-goldfuss/not-just-talk-next-level-community-engagement-renewable-energy> [https://perma.cc/W2NE-8J5L].

16. See, e.g., Jerry Redfern, *In This Tiny New Mexico Town, the Air Quality is Worse Than in Downtown L.A.*, SOURCE N.M. (Aug. 23, 2024), <https://sourcenm.com/2024/08/23/in-this-tiny-new-mexico-town-the-air-quality-is-worse-than-in-downtown-l-a> [https://perma.cc/PA8S-PHSX]; *Communities Dependent on Fossil Fuels Are Vulnerable to Socioeconomic, Environmental Stressors*, RES. FOR THE FUTURE (Dec. 14, 2021), <https://www.rff.org/news/press-releases/communities-dependent-on-fossil-fuels-are-vulnerable-to-socioeconomic-environmental-stressors> [https://perma.cc/GTD6-2VJQ] (describing benefits and negative impacts experienced by fossil fuel communities).

17. See, e.g., Aurelia Glass & Karla Walter, *How Project Labor Agreements and Community Workforce Agreements Are Good for the Biden Administration's Investment Agenda*, CTR. FOR AM. PROGRESS (July 21, 2023), <https://www.americanprogress.org/article/how-project-labor-agreements-and-community-workforce-agreements-are-good-for-the-biden-administrations-investment-agenda> [https://perma.cc/3AL5-H4AX]; *Making Clean Deliver: Improving Clean Energy Job Quality and Growing the Clean Energy Manufacturing Supply Chain in the United States*, BLUEGREEN ALL. [hereinafter BLUEGREEN ALL., *Making Clean Deliver*], <https://www.bluegreenalliance.org/site/>

providing a more in-depth discussion of CWAs—including how different states have promoted CWAs through state energy transition policies and examples of recent successful agreements—and (2) summarizing CBAs with impactful provisions that can provide useful examples for other communities while evaluating how CBAs have been addressed in state transition acts. This Article frames these solutions around the needs and opportunities in New Mexico, a state that is critical to the transition away from fossil fuels but has received little attention in existing scholarship.

This Article will first discuss how CWAs should be used to supplement or augment unionization efforts in New Mexico for clean energy construction projects, using examples from projects that have successfully supported workers and increased diverse representation in the workplace. Additionally, this Article will explain why CWAs might be most successfully utilized if New Mexico implements legislation that incentivizes or requires CWAs for clean energy construction projects. Second, this Article will discuss why CBAs should be used in addition to CWAs to provide benefits to communities that last beyond the duration of a project and address other community needs that might not be covered in a CWA. Finally, this Article will argue that New Mexico, and states with similar energy economies and opportunities, should enact legislation that requires or incentivizes CBAs to center community needs in the energy transition.

I. BACKGROUND

The convergence of labor issues, climate change impacts, and the transition from a fossil-fuel to a clean-energy-based economy presents both challenges and opportunities to address multiple concerns—namely, workers’ rights, environmental justice, and economic justice. This section will summarize the necessary context to understand (1) recent federal actions promoting labor protections, (2) the history and current state of unions, (3) employment and unionization trends in the clean energy sector, (4) climate change impacts and fossil fuel reliance in New Mexico, and (5) New Mexico’s efforts to advance an energy transition and support the communities and workers impacted by it.

First, this Article will frequently use the term “good jobs” as a policy goal. Although conceptions of what constitutes a “good job” may differ, and

making-clean-deliver (last visited Feb. 2, 2026) [<https://perma.cc/H93P-G4SP>]; Evana Said, Devashree Saha, Grace Adcox & Celina Scott-Buechler, *US Clean Energy Projects Need Public Buy-in: Community Benefits Agreements Can Help*, WORLD RES. INST. (Aug. 31, 2023), <https://www.wri.org/insights/community-benefits-agreements-us-clean-energy> [<https://perma.cc/W5WC-YV3X>]; Ann M. Eisenberg, *Transitions in Energy Communities*, 12 GEO. WASH. J. ENERGY & ENV’T L. 103, 109–10 (2021). These articles discuss how CWAs and CBAs are important tools in the energy transition. However, most of them are focused on CWA and CBA deployment for federal projects so do not focus on state laws implementing these tools. Further, even if states are discussed, New Mexico is not mentioned. See generally Glass & Walter, *supra*; BLUEGREEN ALL., *Making Clean Deliver*, *supra*; Said et al., *supra*; Eisenberg, *supra*.

community-centered organizing appropriately empowers workers and residents to articulate their own standards, this Article adopts a consistent definition for analytical purposes. Accordingly, unless otherwise specified, the term “good jobs” refers to employment that provides, at a minimum, a family-supporting wage, employer-sponsored healthcare benefits, safe and healthy working conditions, and robust protections against retaliation and discrimination.¹⁸

Additionally, for consistency, this Article will use the U.S. Department of Energy’s definition of clean energy. Clean energy is thus defined as anything that “refers to net-zero emissions aligned technologies [including] renewable energy, nuclear, non-fossil energy efficiency, zero emission vehicles, and carbon capture, utilization, and storage.”¹⁹ By focusing on clean energy, this Article does not address other sectors and jobs that are either significantly impacted by climate change or are considered a part of a transition economy, or both. Such sectors include, but are not limited to, mining, wildland firefighting, traditional conservation or land-based jobs (e.g., forestry, trail construction), agriculture, and outdoor recreation jobs.²⁰ Each sector has their own challenges and opportunities that could not be sufficiently addressed here; however, some worker and community solutions for clean energy may overlap with these other sectors and can be explored further in future research.

Finally, New Mexico has a large Indigenous population (12.4 percent of the state’s total population) with twenty-three federally recognized Tribes, Nations, and Pueblos.²¹ Since this Article focuses on state legislation, its analysis has limited direct application to Tribal governments, which are sovereign nations rarely subject to state laws.²² Additionally, the applicability of the National Labor Relations Act (NLRA) to Tribal governments is disputed and subject to a

18. This definition is the author’s own opinion of what forms the foundation of a “good job,” but is inspired by the working conditions for which unions fight. *See, e.g., Unions Begin With You*, AM. FED’N OF LAB. & CONG. OF INDUS. ORGS. (AFL-CIO), <https://aflcio.org/what-unions-do> (last visited Nov. 15, 2025) [<https://perma.cc/39DB-NNRW>].

19. 2024 ENERGY & EMPLOYMENT REPORT, *supra* note 3, at xxvii n.1.

20. *See, e.g.,* Katie M. Applebaum, Jay Graham, George M. Gray, Peter LaPuma, Sabrina A. McCormick, Amanda Northcross & Melissa J. Perry, *An Overview of Occupational Risks from Climate Change*, 3 CURRENT ENV’T L HEALTH REPS., Feb. 2016, at 2–4 (discussing heat-related risks increasing for outdoor occupations); Dan Roper, *In New Mexico, Recreation Is Paying Off for Conservation*, TROUT UNLIMITED (June 9, 2021), <https://www.tu.org/magazine/conservation/advocacy/in-new-mexico-recreation-is-paying-off-for-conservation> [<https://perma.cc/44TB-C4UC>] (noting the outdoor recreation economy provides economic transition opportunities).

21. *Tribal Directory*, N.M. INDIAN AFFS. DEP’T, <https://www.iad.nm.gov/nations-pueblos-and-tribes/tribal-directory> (last visited Nov. 21, 2025) [<https://perma.cc/G5LF-VDQZ>]; 23 *NM Federally Recognized Tribes in NM Counties*, N.M. SEC’Y OF STATE, <https://www.sos.nm.gov/voting-and-elections/native-american-election-information-program/23-nm-federally-recognized-tribes-in-nm-counties/> (last visited June 28, 2026) [<https://perma.cc/3QZ7-FAF3>].

22. *See id.*; *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987). Tribes will be subject to state laws if Congress has “expressly so provided.” *Cabazon Band of Mission Indians*, 480 U.S. at 207.

Circuit split.²³ New Mexico is in the Tenth Circuit, one of the two Circuits that will not apply laws of general applicability to Tribes unless congressional intent indicates otherwise.²⁴ Thus, agreements like CWAs that are grounded in the NLRA are not available options in Indian Country because Tribal sovereignty, at least as it relates to labor organizing in the Tenth Circuit, shields Tribal employers from federal labor regulation.

However, while state legislation does not require them,²⁵ Tribal Benefit Agreements (TBAs) are becoming more prevalent. Both TBAs and CBAs have similar provisions, are both technically contracts, and can facilitate similar outcomes.²⁶ However, it is crucial to note that TBAs always involve a sovereign government as a party, so the two should not be conflated—that is, a benefit agreement with a Tribal government is distinct from a benefit agreement with a general community.²⁷ Tallgrass Institute recently released a comprehensive guide and analysis of TBAs, sharing specific guidance for entering into a benefit agreement with a Tribal government.²⁸ Thus, there exists a substantial body of research for TBAs that this Article cannot and should not replicate or summarize, focusing instead on CBAs and state legislation.

A. Recent Federal Developments in Labor and Clean Energy Investment

The Biden Administration was considered one of the most pro-union and pro-labor administrations in recent history, evidenced by the growth in unions under the administration,²⁹ President Biden's actions in support of labor and unions,³⁰ and the passage of the Bipartisan Infrastructure Investment and Jobs

23. Note, *Tribal Power, Worker Power: Organizing Unions in the Context of Native Sovereignty*, 134 HARV. L. REV. 1162, 1165–68 (2021).

24. *Id.* at 1167–68 (discussing *NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002)).

25. The ability for Tribal governments to pass legislation requiring non-Tribal companies to enter into TBAs poses other jurisdictional questions that this Article does not address.

26. See KATE R. FINN, MELANIE MATTELIANO & MARANDA COMPTON, TALLGRASS INSTITUTE, *TRIBAL BENEFIT AGREEMENTS: DESIGNING FOR SOVEREIGNTY* 5 (2025), <https://www.colorado.edu/program/tallgrass/media/875> [<https://perma.cc/Z3L4-MGZA>]; see also *infra* Part II.B (defining CBAs); Ruby Moore-Bloom, *Tribal Benefits Agreements: Opportunities, Barriers, and Best Practices*, CLEAN ENERGY TRANSITION INST. (July 24, 2025), <https://www.cleanenergytransition.org/post/tribal-benefits-agreements-opportunities-barriers-and-best-practices> [<https://perma.cc/ADG5-LDVK>] (noting that TBAs are “legally binding agreement[s]”).

27. *Id.* at 17.

28. See *id.* at 2, 4–5.

29. See *Statement from President Joe Biden on Increased Worker Organizing*, *supra* note 12; Lynn Rhinehart, Celine McNicholas, & Margaret Pydock, *The Biden Board: How President Biden's NLRB Appointees Are Restoring and Supporting Workers' Rights*, ECON. POL'Y INST. (May 1, 2024), <https://www.epi.org/publication/bidens-nlr-restoring-rights/> [<https://perma.cc/N4SF-YJVH>].

30. See, e.g., Exec. Order No. 14,063, 87 Fed. Reg. 7363, 7363 (Feb. 4, 2022) (requiring Project Labor Agreements for all federal projects costing over \$35 million); Erik Loomis, *Biden's Labor Report Card: Historian Gives "Union Joe" a Higher Grade Than Any President Since FDR*, GOV'T EXEC. (May 30, 2024), <https://www.govexec.com/management/2024/05/bidens-labor-report-card-historian-gives-union-joe-higher-grade-any-president-fdr/397002> [<https://perma.cc/H2K8-2LGZ>] (discussing President Joe Biden's picket line walk, encouragement of Amazon workers to vote to join a union, administrative rule making, National Labor Relations Board appointments, and support of the PRO Act).

Act (IIJA) and the Inflation Reduction Act (IRA).³¹ Additionally, the administration set substantial clean energy goals, such as a carbon-free energy sector by 2035, and oversaw the largest federal investments in clean energy to date.³²

The IRA represented a hard-fought and substantial climate victory, dedicating \$370 billion across multiple pathways to emissions reduction and infrastructure investment.³³ The IRA was also a job creation tool that incentivized the use of registered apprentices and the payment of prevailing wages for clean energy projects.³⁴ In order to encourage projects in communities with high rates of poverty or job loss due to energy transitions, the IRA offered tax credits for companies siting clean energy projects near those communities.³⁵

Additionally, Community Benefit Plans were required for many IIJA and IRA funding opportunities, which are not binding but can include labor provisions and encourage community investments.³⁶ Finally, agencies encouraged labor agreements by developing educational resources on CWAs and CBAs.³⁷ Outside of the IRA and IIJA, a Biden administration Executive Order mandated that Project Labor Agreements were again required for all federal infrastructure projects costing more than \$35 million.³⁸ In sum, from 2021 to 2024, the federal government made unprecedented steps in promoting labor protections, particularly with regard to promoting labor protections within the energy transition.

What was considered a peak period of federal investment in climate and labor initiatives has rapidly shifted towards what may be characterized as one of the worst periods for climate investments and labor relations. Upon entering office, the second Trump administration immediately signaled a reversal in

31. *Statement from President Joe Biden on Increased Worker Organizing*, *supra* note 12.

32. Holmes Lybrand, *Biden Wants Millions of Clean-Energy Related Jobs. Can It Happen?*, CNN (Feb. 2, 2021), <https://www.cnn.com/2021/02/01/politics/joe-biden-green-energy-jobs/index.html> [<https://perma.cc/FXG4-BAYS>]; Molly Bryden, *Federal Investments in Climate & Clean Energy Infrastructure in Ohio*, POL'Y MATTERS OHIO (Nov. 20, 2024), <https://www.policymattersohio.org/research-policy/sustainable-communities/energy/federal-investments-in-climate-clean-energy-infrastructure-in-ohio> [<https://perma.cc/45VK-N3XY>].

33. Tony Romm, *House Passes Inflation Reduction Act, Sending Climate and Health Bill to Biden*, WASH. POST (Aug. 12, 2022), <https://www.washingtonpost.com/us-policy/2022/08/12/inflation-reduction-act-house-vote/> [<https://perma.cc/HBL5-57JM>].

34. THE WHITE HOUSE, BUILDING A CLEAN ENERGY ECONOMY: A GUIDEBOOK TO THE INFLATION REDUCTION ACT'S INVESTMENTS IN CLEAN ENERGY AND CLIMATE ACTION 7 (2023), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf> [<https://perma.cc/PLN5-5HSJ>]; *Summary of Key Policy Provisions*, BLUEGREEN ALL. [hereinafter BLUEGREEN ALL., *IRA Summary*], <https://www.bluegreenalliance.org/site/summary-of-key-policy-provisions> (last visited Feb. 2, 2026) [<https://perma.cc/SGD5-MSH2>].

35. BLUEGREEN ALL., *IRA Summary*, *supra* note 34.

36. *About Community Benefits Plans*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/infrastructure/about-community-benefits-plans> (last visited Nov. 1, 2024) [<https://perma.cc/6HBK-9AT5>].

37. Glass & Walter, *supra* note 17.

38. Exec. Order No. 14,063, 87 Fed. Reg. 7363, 7363 (Feb. 4, 2022).

federal policy: rescinding executive orders that prioritized climate action, job creation, and environmental justice, and declaring an “energy emergency” that put fossil fuels at the forefront while putting renewable energy on the chopping block.³⁹ Trump’s signature policy bill, the “One Big Beautiful Bill Act,” enacted on July 4, 2025, repealed many of the clean energy incentives from the IRA.⁴⁰ Additionally, many federal websites with information on CWAs and CBAs are now no longer active.⁴¹ However, the Biden-era executive order requiring PLAs for federal projects has not been rescinded yet; it remains in effect, with guidelines emphasizing that PLAs should be used so long as they are “practicable and cost-effective.”⁴²

B. The Challenges and Opportunities in a “Just Transition”

The federal government’s focus on labor protections and job creation in the growing clean energy sector under Biden was important; even if many of those policies and practices have now been rescinded, they can still inform *state* energy transition planning. Of course, when it is politically feasible, the federal government must step in to re-implement these policies since it can offer broader interstate enforcement and consistency for both communities and regulated entities than individual states can. However, to meet critical climate goals, the United States cannot maintain the same level of fossil fuel extraction and must move decisively toward a clean energy economy.⁴³ If the federal government is failing to lead, states must pick up the torch, taking lessons learned from federal implementation to build robust state policies. Yet, there is no way around the reality that attempting to transition away from fossil fuel employment towards clean energy jobs will create multiple labor issues.

39. Exec. Order No. 14,154, 90 Fed. Reg. 8353, 8353–55, 8357 (Jan. 20, 2025) (titled “Unleashing American Energy”); Exec. Order No. 14,156, 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025) (titled “Declaring a National Energy Emergency”).

40. See *One Big Beautiful Bill: Final Impact Analysis on IRA Clean Energy Tax Credits*, BASIS (July 9, 2025), <https://www.buildwithbasis.com/insights/one-big-beautiful-bill-final-impact-analysis-on-ira-clean-energy-tax-credits>; see also Brad Plumer, *How the G.O.P. Bill Will Reshape America’s Energy Landscape*, N.Y. TIMES (July 3, 2025), <https://www.nytimes.com/2025/07/03/climate/congress-bill-energy.html> [<https://perma.cc/JUF8-STTL>].

41. Much of the research for this note occurred in Fall 2024. After January 20, 2025, I had to use internet archives to access many of the Biden era materials I cite to later as they had been removed from agency websites.

42. RUSSELL T. VOIGHT, EXEC. OFF. OF THE PRESIDENT, M-25-29, MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES: USE OF PROJECT LABOR AGREEMENTS ON FEDERAL CONSTRUCTION PROJECTS (2025), <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-29-Use-of-Project-Labor-Agreements-on-Federal-Construction-Projects-Amendments-to-OMB-Memorandum-M-24-06.pdf> [<https://perma.cc/4FU3-DL5R>].

43. See *Climate Action Tracker: USA*, CLIMATE ACTION TRACKER, <https://climateactiontracker.org/countries/usa> (last visited Feb. 2, 2026) [<https://perma.cc/XUL5-3HYT>]. Unsurprisingly, the United States continues to be substantially off target. *Id.*

In some industries and locations, transitioning from fossil fuel jobs to clean energy jobs could result in salary decreases and loss of union membership.⁴⁴ This is due to the fact that clean energy jobs, on average, pay less than fossil fuel jobs,⁴⁵ and depending on the location and specific clean energy industry, the worker might be unable to transition to another unionized job.⁴⁶ Of course, this is not universal; overall unionization in the fossil fuel energy sector is still low, and not all fossil fuel energy jobs pay well.⁴⁷

Another transition issue is the spatial mismatch: Places where fossil fuel jobs are phased out are not necessarily ideal locations for clean energy buildout, meaning that workers would likely have to relocate to find comparable jobs.⁴⁸ These are difficult challenges to address, and there is no one-size-fits-all solution. However, if government policies heavily subsidize the growth of one sector while working to decrease reliance on another, those same policies must also prioritize the creation of well-paying jobs for all workers. The question is, how can this be done, and what tools can help?

C. Unions: Benefits, History, Future, and Membership

“[Y]ou better thank a union member for the five-day work week . . . [y]ou better thank a union member for sick leave . . . paid leave . . . [and] vacation time.”⁴⁹ This statement by then-presidential candidate Kamala Harris reflects a

44. See Heather Richards, *Biden’s Clean Energy Plan: Job Creator or Killer?*, E&E NEWS (Feb. 9, 2021), <https://www.eenews.net/articles/bidens-clean-energy-plan-job-creator-or-killer> [https://perma.cc/V9CP-C488] (noting the pay discrepancy between jobs in the fossil fuel economy and clean energy economy). The closure of the San Juan Generating plant in New Mexico is a local example of the hardships faced by workers laid off or who lose union benefits in an economically depressed region. Nick Bowlin, *New Mexico’s Displaced Coal Miners Have Gotten the Shaft on Severance Pay*, HIGH COUNTRY NEWS (Nov. 7, 2023), <https://www.hcn.org/articles/labor-new-mexicos-displaced-coal-miners-have-gotten-the-shaft-on-severance-pay> [https://perma.cc/22W5-3RXY].

45. See Richards, *supra* note 44.

46. See, e.g., Bowlin, *supra* note 44.

47. See 2024 ENERGY & EMPLOYMENT REPORT, *supra* note 3, at 37, 104 (stating that the highest unionization rate is in natural gas electric power generating jobs at 17 percent and lowest was around 7 percent in general fossil fuel production); see also SHANNON SANCHEZ YOUNGMAN, GABRIEL R. SANCHEZ, YOSSELIN CORDOVA, MELANIE DOMINGUEZ & GABRIEL E. MARTINEZ, UNIV. OF N.M. CTR. FOR SOC. POL’Y, *SOUTHEASTERN NEW MEXICO OIL & GAS WORKFORCE STUDY* 36 (2024), <https://files.constantcontact.com/b6dfe469001/7eec220a-7cab-47d8-8370-62e981dc403a.pdf?rdr=true> [https://perma.cc/8TRZ-XTJF].

48. See Richards, *supra* note 44. New Mexico has widespread fossil fuel development and clean energy development, so the spatial mismatch might be slightly less severe than other places. However, comparing maps of current fossil fuel hot spots and more recent clean energy development shows that fossil fuel workers in the northwest and northeast portions of the state would likely have to move for a clean energy job. *Compare Renewable Energy Overview*, N.M. ENERGY, MINS. & NAT. RES. DEP’T, <https://www.emnrd.nm.gov/ecmd/renewable-energy-overview> (last visited Feb. 2, 2026) [https://perma.cc/7JU3-T9BL] (displaying a map of clean energy projects in New Mexico), *with Frequently Asked Questions About Oil and Gas*, N.M. BUREAU OF GEOLOGY & MIN. RES., <https://geoinfo.nmt.edu/faq/energy/petroleum/home.html> (last visited Feb. 2, 2026) [https://perma.cc/WHV2-PYLJ] (displaying a map of regions with principal oil, gas, and CO₂ production in New Mexico).

49. Kalea Hall, Craig Mauger & Grant Schwab, *Kamala Harris in Detroit on Labor Day: ‘Thank a Union Member’*, THE DETROIT NEWS (Sept. 2, 2024), <https://www.detroitnews.com/story/>

statement many people have likely heard before—and for good reason. Unions are often considered the gold standard of workplace protection, and many environmental and labor advocates encourage union organizing and membership.⁵⁰

Unions are foundational institutions that have transformed the lives of workers and communities by fighting against unsafe workplace conditions while securing health care, pensions, and living wages, among other benefits.⁵¹ Unions are also viewed as promoters of democratic processes and have the power to wield strong political influence in advancing worker-centered legislation.⁵²

Unions also confer substantial benefits to the communities in which their members live and work,⁵³ the most obvious including higher median incomes and lower poverty rates due to consistent higher pay.⁵⁴ A union member's community is more likely to have higher voter turnout, fewer voter suppression laws, improved educational attainment, and more pro-worker legislation, such as paid sick leave laws.⁵⁵ Moreover, non-union workers benefit from union presence due to more competitive wages, better unemployment insurance laws, more progressive tax structures, and improved health insurance access.⁵⁶ In sum, unionization is an important end goal for any movement concerned with protecting workers.

Unfortunately, few workers in the United States currently enjoy the benefits of unions. Union membership has declined across the country since the late 1950s.⁵⁷ This has been due to factors such as resistance from private-sector employers, federal and state legislative action weakening collective bargaining

news/politics/2024/09/02/kamala-harris-detroit-donald-trump-uaw-labor-day-presidential-race/75046704007 [https://perma.cc/8N22-BQY9].

50. See WAYNE. N. OUTTEN, ROBERT J. RABIN & LISA R. LIPMAN, *THE RIGHTS OF EMPLOYEES AND UNION MEMBERS* 316–22 (2d. ed. 1994); see also CLIFFTON ET AL., *supra* note 10, at 1–2, 4–5; BLUEGREEN ALL., *Making Clean Deliver*, *supra* note 17; Laura Feiveson, *Labor Unions and the U.S. Economy*, U.S. DEP'T OF THE TREASURY (Aug. 28, 2023), <https://home.treasury.gov/news/featured-stories/labor-unions-and-the-us-economy> [https://perma.cc/63JC-43ZR].

51. See Craver, *supra* note 11, at 20, 32; see also Jenn Hagedorn, Claudia Alexandra Paras, Howard Greenwich & Amy Hagopian, *The Role of Labor Unions in Creating Working Conditions That Promote Public Health*, 106 AM. J. PUB. HEALTH 989 (2016).

52. See Craver, *supra* note 11, at 47; John S. Ahlquist, *Labor Unions, Political Representation, and Economic Inequality*, 20 ANN. REV. POL. SCI. 409, 420–25 (2017).

53. See Craver, *supra* note 11, at 47; Ahlquist, *supra* note 52, at 420–25; see generally CELINE MCNICHOLAS, MARGARET POYDOCK, HEIDI SHIERHOLZ & HILARY WETHING, ECON. POL'Y INST., *UNIONS AREN'T JUST GOOD FOR WORKERS—THEY ALSO BENEFIT COMMUNITIES AND DEMOCRACY* (2025), <https://files.epi.org/uploads/308564.pdf> [https://perma.cc/RM6A-LJ3G] (broadly discussing trends where states with high union density tend to have higher rates of health insurance coverage, paid leave laws, voter protections, and unemployment benefit access).

54. See MCNICHOLAS ET AL., *supra* note 53, at 1–2.

55. *Id.* at 21, 23–24, 26.

56. *Id.* at 12, 15–16, 19.

57. Feiveson, *supra* note 50; see generally LAWRENCE MISHEL, LYNN RHINEHART & LANE WINDHAM, ECON. POL'Y INST., *EXPLAINING THE EROSION OF PRIVATE-SECTOR UNIONS* 8–10 (2020), <https://files.epi.org/pdf/215908.pdf> [https://perma.cc/25QC-VUP9] (examining the causes of private-sector union declines).

rights, Supreme Court decisions eroding federal protections, economic downturns, the rise of the gig-economy, and the resurgence of union-busting.⁵⁸ The lack of union representation and the challenges faced by unionization suggest that, in addition to supporting organized labor, other mechanisms must be used to improve worker and community conditions in the clean energy sector.

Most workers in the United States—including New Mexico—are not represented by a union, a trend that is particularly true in the construction industry and among people of color. The average union membership rate in the United States is 10 percent, while New Mexico’s union membership rate has averaged around 6.85 percent since 2010.⁵⁹ Nationally, public sector and utility employees represent sectors that are unionized at rates over 19 percent.⁶⁰ In stark contrast, the construction sector hovers around 10.7 percent.⁶¹

Demographic disparities can be stark as well, with nearly 75 percent of unionized workers identifying as white.⁶² This racial gap reflects a long history of deliberate segregation within unions and the exclusion of people of color from early organizing efforts.⁶³ Although systemic discrimination and exclusion were slowly eroded—with the labor movement playing a significant role in the 1960s Civil Rights Movement⁶⁴—the degree of racial integration within unions varies by union, location, and occupation.⁶⁵ While white workers might represent three-quarters of union membership, Black workers are more likely than white workers to be in a union, and workers of color overall experience greater wage advantages from union membership than white workers.⁶⁶ However, Latinx and Asian workers are less likely than Black or white workers to be unionized.⁶⁷ Additionally, unionized workplaces are more likely to employ targeted hiring practices to increase diversity and inclusion in the workplace.⁶⁸ Despite these

58. MISHLE ET AL., *supra* note 57, at 15–34; MELVYN DUBOFSKY & JOSEPH A. MCCARTIN, *LABOR IN AMERICA: A HISTORY* 433–35 (9th ed. 2017).

59. See Moskowitz, *UNION MEMBERSHIP*, *supra* note 5, at 13.

60. See *id.* at 12.

61. *Id.*

62. See *id.*

63. Herbert Hill, *Labor Unions and the Negro: The Record of Discrimination*, COMMENT. (Dec. 1959), <https://www.commentary.org/articles/herbert-hill/labor-unions-and-the-negro-the-record-of-discrimination> [<https://perma.cc/HU29-PH5E>]; Eric Arnesen, *Civil Rights and the Labor Movement: A Historical Overview*, INT’L BHD. OF TEAMSTERS (Feb. 24, 2021), <https://teamster.org/2021/02/civil-rights-and-the-labor-movement-a-historical-overview> [<https://perma.cc/XV9C-QTP9>].

64. Arnesen, *supra* note 63.

65. See Henry S. Farber, Daniel Herbst, Ilyana Kuziemko & Suresh Naidu, *Unions and Inequality Over the Twentieth Century: New Evidence from Survey Data*, 136 Q.J. ECON. 1325, 1342–44 (2021).

66. JOSH BIVENS, CELINE McNICHOLAS, KYLE K. MOORE & MARGARET POYDOCK, *UNIONS PROMOTE RACIAL EQUITY* 1–2 (July 31, 2023), <https://files.epi.org/uploads/270662.pdf> [<https://perma.cc/L4WM-VW7B>]; BUREAU OF LAB. STAT., U.S. DEP’T OF LAB., *USDLE-26-0229, UNION MEMBERS* — 2025, at 2 (Feb. 18, 2026), <https://www.bls.gov/news.release/pdf/union2.pdf> [<https://perma.cc/T4NC-V2KF>]; see also Moskowitz, *UNION MEMBERSHIP*, *supra* note 5, at 12.

67. See BUREAU OF LAB. STAT., *supra* note 66, at 2–3.

68. 2024 ENERGY & EMPLOYMENT REPORT, *supra* note 3, at viii.

gains, some workers of color still perceive unions as being only for white workers, a perception reinforced by the ways unions and the working class can be portrayed in political discourse and the media.⁶⁹

D. Jobs in the Clean Energy Sector

Overall, jobs in the energy sector outpaced national employment growth in 2023.⁷⁰ Within that substantial expansion, jobs in the clean energy sector represented over half of that growth and now account for 42 percent of all energy jobs.⁷¹ Union membership, or coverage by some form of collective bargaining, in the clean energy sector was slightly over 12 percent in 2024.⁷² This stands slightly above the percentage of union membership in the energy sector overall, and is 50 percent more than the private-sector national average.⁷³

This growth provides a unique opportunity for the clean energy sector to provide better-paying and safer jobs than many fossil fuel jobs, addressing the “cradle to grave” health risks that fossil fuel employment poses to workers *and* communities.⁷⁴ However, despite these initial wins, almost 88 percent of the sector is *not* unionized.⁷⁵ This, coupled with the fact that unionization continues to face nationwide challenges and requires long-term organizing, underscores the need to employ alternative strategies that can bridge the gap and support workers and communities in the near term.

E. The Clean Energy Transition in New Mexico

Why is the clean energy sector so pivotal, especially in New Mexico? The state has already suffered from many climate change-driven events, such as catastrophic wildfires, decreased snowpack, extreme drought, flooding, and an increasing number of days at dangerous temperatures.⁷⁶ These negative impacts will only worsen as time goes on with insufficient climate action.⁷⁷ Reducing emissions is therefore critical for the future of New Mexico.

69. See Erik Loomis, *White Nationalism, the Working Class, and Organized Labor*, 29 NEW LAB. F. 20, 24–26 (2020); Zoom Interview with Eli Cuna, Co-Founder, Semilla Strategies LLC (Sept. 6, 2024) (discussing perception of unions by people of color in New Mexico).

70. 2024 ENERGY & EMPLOYMENT REPORT, *supra* note 3, at vi.

71. *Id.*

72. *Id.* at viii.

73. *Id.*

74. See JESS BEAGLEY, GLOB. CLIMATE & HEALTH ALL., CRADLE TO GRAVE: THE HEALTH HARMS OF FOSSIL FUEL DEPENDENCE AND THE CASE FOR A JUST PHASE-OUT 2–6 (2022), <https://climateandhealthalliance.org/wp-content/uploads/2022/07/Cradle-To-Grave-Fossil-Fuels-Brief.pdf> [<https://perma.cc/QWR8-3FD9>].

75. See 2024 ENERGY & EMPLOYMENT REPORT, *supra* note 3, at viii.

76. N.M. ENERGY MINS. & NAT. RES. DEP’T, NEW MEXICO CLIMATE ADAPTATION & RESILIENCE PLAN 9, 24–34 (2024) https://www.climateaction.nm.gov/wp-content/uploads/sites/39/2024/04/NM-C.A.R.P._03.06.24-1.pdf [<https://perma.cc/ZVX8-DANT>].

77. See MICHAEL JENSEN & MOLLY TAYLOR, CONSERVATION VOTERS N.M., THE STATE OF CLIMATE ACTION IN NEW MEXICO: A CALL TO ACTION 4–5 (2024), https://www.climateactionnownm.org/_files/ugd/8f3caf_c767a82abe2943709ba954b4e6abcd7d.pdf [<https://perma.cc/7FET-7W59>].

New Mexico's energy sector, with substantial fuel production, accounts for around 30,000 jobs, nearly all of which are fossil fuel-based.⁷⁸ In 2021, the state was the second-largest oil producer in the United States and ranked in the top ten for natural gas production.⁷⁹ While oil and gas extraction industry jobs represent a small percentage of total employment in the state, New Mexico has one of the highest concentrations of such jobs (sixth in the nation).⁸⁰

At the same time, New Mexico is consistently considered one of the poorest states in the nation.⁸¹ Since a large share of the state budget comes from oil and gas revenues,⁸² public spending and services are closely tied to the success of the oil and gas industry.⁸³ However, growing advocacy efforts aim to “decouple” the state budget from oil and gas, and advocates and policy-makers alike predict that this revenue source will soon need to shift to more stable and sustainable sources.⁸⁴ New Mexico's substantial amount of public lands and its climate—with abundant sunshine and rich wind resources—also makes it favorable for clean energy development.⁸⁵ Overall, the clean energy transition provides an opportunity for New Mexico to meet climate goals, improve community health, and diversify the state economy.

78. See OFF. OF ENERGY JOBS, U.S. DEP'T OF ENERGY, U.S. ENERGY & EMPLOYMENT REPORT – 2023: NEW MEXICO 3 (2023), <https://www.energy.gov/sites/default/files/2023-06/USEER23-NM-v2.pdf> [<https://perma.cc/M3LE-S8ZD>].

79. Rachel Moskowitz, N.M. DEP'T OF WORKFORCE SOLS., *A Profile of Oil and Natural Gas Workers in New Mexico*, 51 LAB. MKT. REV., Feb. 2022, at 8 [hereinafter Moskowitz, *Profile of Oil and Natural Gas Workers*], https://www.dws.state.nm.us/Portals/0/DM/LMR_2022_Feb.pdf?ver=DQD7Xi2303IbLEAUeFNClA%3d%3d [<https://perma.cc/T5F4-EY9K>].

80. *Id.* at 9; SANCHEZ YOUNGMAN ET AL., *supra* note 47, at 4. The employment percentages range from 1.9 percent, Moskowitz, *Profile of Oil and Natural Gas Workers*, *supra* note 79, at 9, to 8.5 percent or higher, *see* SANCHEZ YOUNGMAN ET AL., *supra* note 47, at 4. Data are sparse and untrustworthy due to the difficulty in compiling complete lists of oil and gas companies operating in the state. *See* Molly Montgomery, *The Boots on Buck Jackson Road*, SEARCHLIGHT NEW MEXICO (May 22, 2025), <https://searchlightnm.org/new-mexico-permian-basin-oil-gas-men-workers-death-injury-disease-family-mental-health/> [<https://perma.cc/36PT-T8FQ>].

81. N.M. LEGIS. FIN. COMM., PROGRESS REPORT: DESPITE BENEFITS, POVERTY PERSISTS 1–3 (2023), https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Progress%20Report%20-%20Costs%20and%20Stacking%20Income%20Support.pdf [<https://perma.cc/L4AN-E8QT>].

82. See JENNIFER FAUBION, N.M. LEGIS. FIN. COMM., PRESENTATION: OIL AND GAS REVENUE TO THE STATE OF NEW MEXICO 12 (June 11, 2024) [hereinafter N.M. LEGIS. FIN. COMM., PRESENTATION], <https://www.nmlegis.gov/Handouts/ALFC%20061124%20Item%204%20Oil%20and%20Gas%20Revenue%20to%20the%20State%20of%20NM.pdf> [<https://perma.cc/5U5K-TPEK>].

83. See N.M. LEGIS. FIN. COMM., REPORT TO THE FIFTY-SIXTH LEGISLATURE, FIRST SESSION: POST-SESSION REVIEW 3, 7 (2023), https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Post_Session_Fiscal_Reviews/May%202023.pdf [<https://perma.cc/5QR9-WSLZ>].

84. See *id.* at 4–5; *see generally* PAIGE KNIGHT, N.M. VOICES FOR CHILD., REVENUE WE CAN RELY ON (2022), <https://www.nmvoices.org/wp-content/uploads/2021/10/Revenue-Diversification-Brief-2022-update-web.pdf> [<https://perma.cc/Z387-KW9Z>] (discussing why New Mexico must diversify its revenue to move away from the volatile oil and gas industry).

85. *New Mexico: Analysis*, U.S. ENERGY INFO. ADMIN, <https://www.eia.gov/states/NM/analysis> (last updated July 17, 2025) [<https://perma.cc/7XMS-4G9X>].

Transitioning towards clean energy will also have important implications for New Mexico communities since clean energy projects do not have the same negative health impacts as oil and gas projects. Communities in New Mexico with the highest concentration of oil and gas production have incredibly poor air quality, leading to significant respiratory issues.⁸⁶ Water quality is also worse for communities near oil and gas production.⁸⁷ Additionally, oil spills or oil tank fires in Northern New Mexico have resulted in environmental contamination and community evacuations.⁸⁸ Finally, New Mexico faces a looming problem from abandoned and orphaned oil and gas wells, which can leak toxins and methane if no private party can be held liable for remediation and the state lacks resources to step in to remediate after abandonment by the private entity.⁸⁹

New Mexico has already taken a significant step towards a clean energy transition. In 2019, New Mexico was one of eight states⁹⁰ to pass major climate and clean energy legislation through its Energy Transition Act (ETA).⁹¹ The law set ambitious, stepwise goals for achieving 100 percent zero-carbon electricity by 2045⁹² and created funding mechanisms to facilitate the shutdown of coal-fired power plants.⁹³

To mitigate the socioeconomic impacts of the power plant shutdowns, the ETA created three targeted funds. The first supports the state Indian Affairs Department in addressing issues faced by Indigenous communities affected by the energy transition.⁹⁴ The second assists communities near the shutdown power plants in diversifying their local economies and promoting industries beyond fossil fuel production.⁹⁵ The third provides displaced workers with direct payments and access to certified apprenticeship programs.⁹⁶ This fund was utilized in 2022 to support workers impacted by the closure of the San Juan Generating Plant; the New Mexico Department of Workforce Solutions created

86. *Id.* at 19, 22; *see* Redfern, *supra* note 16.

87. JENSEN & TAYLOR, *supra* note 77, at 20.

88. *Id.* at 19–20.

89. *Id.* at 20–21; *see also* Jerry Redfern, *New Mexico's Billion-Dollar Oilfield Orphans*, SOURCE N.M. (Sept. 16, 2025), <https://sourcenm.com/2025/09/16/new-mexicos-billion-dollar-oilfield-orphans> [<https://perma.cc/P42T-HK4X>].

90. *See* Lori Bird & Tyler Clevenger, *2019 Was a Watershed Year for Clean Energy Commitments from U.S. States and Utilities*, WORLD RES. INST. (Dec. 20, 2019), <https://www.wri.org/insights/2019-was-watershed-year-clean-energy-commitments-us-states-and-utilities> [<https://perma.cc/BA9K-U5ZC>].

91. N.M. STAT. ANN. §§ 62-18-1 to -23 (2019).

92. *Id.* § 62-16-4(A)(1–6).

93. *Id.* §§ 62-18-3 to -4.

94. *Id.* § 62-18-16(A)–(C).

95. *Id.* § 62-18-16(D)–(E). “Affected community” is defined as a New Mexico county “located within one hundred miles of a New Mexico facility producing electricity that closes, resulting in at least forty displaced workers. . . .” *Id.* § 62-18-16(L)(1).

96. *Id.* § 62-18-16(G), (I). “Displaced worker” is defined as a New Mexico resident who became unemployed “due to the abandonment of a New Mexico facility producing electricity that . . . displace[d] . . . at least forty workers. . . .” *Id.* § 62-18-16(L)(2)(a).

a Bridge Training Program, providing one-time direct payments of \$20,000 to over 500 displaced workers.⁹⁷

By setting these ambitious goals for decarbonizing the grid, New Mexico has taken important steps to mitigate climate change through emissions reduction. However, the ETA is not a comprehensive transition policy; it only addresses coal, not natural gas-powered power plants, and does not address oil and gas development in New Mexico. Moreover, the ETA did not include labor and community protection measures to accompany the clean energy buildout.

To achieve a truly just and effective transition, New Mexico must not only support displaced fossil fuel workers but also strengthen protections for current clean energy sector workers and expand opportunities for the future workforce. Fostering worker and community support for the clean energy sector will be a vital component of this transition, and the tools presented in this Article can help advance that goal.

II. ANALYSIS

New Mexico can build on the momentum of the 2019 Energy Transition Act by either incentivizing or requiring CWAs and CBAs for clean energy projects. Part II.A provides an overview of CWAs, what they are and what they can do for workers and communities, then addresses the limitations and opposition CWAs face. It then provides examples of CWAs that have been successfully implemented to illustrate what types of provisions are included and how they can benefit workers and communities. Next, it describes how legislative action in Oregon, Washington, Michigan, and California incentivized CWAs and prioritized labor protections overall, followed by an analysis of how similar legislation would work in New Mexico.

Part II.B turns to CBAs, explaining what they are and how they can serve workers and communities, while also noting the concerns, opposition, and possible limitations they present. It next summarizes selected CBAs to illustrate possible model provisions that could inform future CBAs. Finally, the section will discuss legislation in Maryland and Michigan that incentivizes or requires CBAs for clean energy projects and considers how those frameworks could be modeled in New Mexico.

A. *Community Workforce Agreements*

1. *Overview*

CWAs are a form of collective bargaining agreement. Collective bargaining agreements are the contracts that arise from the collective bargaining process

97. N.M. DEP'T OF WORKFORCE SOLS., DISPLACED WORKER ASSISTANCE PLAN: VERSION 2.0, 9–10 (2023), https://www.dws.state.nm.us/Portals/0/PDF/Displaced_Worker_Plan_23-11-15.pdf [<https://perma.cc/2X2Q-2A36>].

between a union and employers.⁹⁸ Within the construction industry, certain types of collective bargaining agreements called Project Labor Agreements (PLAs) are negotiated before the start of a project and are tied to the projects themselves instead of workplaces or unions.⁹⁹ Because the construction industry has unique challenges (e.g., it is project-based and more temporary in nature),¹⁰⁰ it is exempt from certain restrictions in the NLRA and can enter into these pre-hire agreements.¹⁰¹ PLAs almost always include no-strike clauses and arbitration procedures.¹⁰² Beyond that, PLAs can specify wage and benefit terms, require union hiring halls, incorporate local hiring plans, and outline apprenticeship requirements, among many others.¹⁰³

PLAs cover both union and non-union members and are enforced through arbitration or enforcement actions by the National Labor Relations Board (NLRB).¹⁰⁴ PLAs are encouraged at the federal level,¹⁰⁵ and in some jurisdictions, are required for public construction projects. For example, Bernalillo County, New Mexico has a PLA for projects serving “the interests of county residents” with total costs exceeding \$7,000,000.¹⁰⁶

CWAs can be a type of PLA or are incorporated into a PLA.¹⁰⁷ Together, they can increase the benefits to the community and promote a more diverse workforce without requiring a worker to join a union.¹⁰⁸ CWAs include the PLA

98. BETTY W. JUSTICE, *UNIONS, WORKERS, AND THE LAW* 266–67 (1983).

99. U.S. DEP’T OF LAB., *SIX KEY FACTS ABOUT FEDERALLY-FUNDED PROJECT LABOR AGREEMENTS*, https://www.dol.gov/sites/dolgov/files/OPA/GoodJobs/Docs/Six_Key_Facts_About_PLAs.pdf (last visited Mar. 4, 2026) [<https://perma.cc/ESK5-J247>].

100. *Bldg. & Constr. Trades Council v. Associated Builders & Contractors of Mass.*, 507 U.S. 218, 231 (1993); 1 NAT’L LAB. & EMP. COMM., NAT’L LAWS. GUILD, *EMPLOYEE AND UNION MEMBER GUIDE TO LABOR LAW* § 5:9 (2025).

101. *Bldg. & Constr. Trades Council*, 507 U.S. at 230–31; 29 U.S.C. § 158(f).

102. U.S. DEP’T OF LAB., *PROJECT LABOR, COMMUNITY WORKFORCE, AND COMMUNITY BENEFITS AGREEMENTS RESOURCE GUIDE 1* [hereinafter U.S. DEP’T OF LAB., *AGREEMENTS*], https://www.dol.gov/sites/dolgov/files/OPA/GoodJobs/Docs/Project_Labor_Community_Workforce.pdf (last visited Sept. 26, 2024) [<https://perma.cc/5R7T-2GPQ>].

103. *Id.*

104. *Id.* at 2.

105. See Exec. Order No. 14,063, 87 Fed. Reg. 7363, 7363 (Feb. 4, 2022).

106. BERNALILLO, N.M., CODE §§ 2-424, -426 (2020).

107. It should be noted that PLAs and CWAs are often used interchangeably in the literature and more recently, a lot of PLAs are CWAs because they include community provisions. See DALE BELMAN & MATTHEW M. BODAH, *BUILDING BETTER: A LOOK AT BEST PRACTICES FOR THE DESIGN OF PROJECT LABOR AGREEMENTS* 15 (2010), <https://files.epi.org/page/-/pdf/BP274.pdf> [<https://perma.cc/6S75-XPSR>].

108. MARIA FIGUEROA, JEFF GRABELSKY & RYAN LAMARE, CORNELL UNIV. SCH. OF INDUS. RELS., *COMMUNITY WORKFORCE PROVISIONS IN PROJECT LABOR AGREEMENTS: A TOOL FOR BUILDING MIDDLE-CLASS CAREERS* 4 (2011), <https://ecommons.cornell.edu/server/api/core/bitstreams/1a101122-d936-4450-8e98-5174f2678616/content> [<https://perma.cc/B6GR-AN8X>]; see EMERALD CITIES COLLABORATIVE, *ANATOMY OF AN EFFECTIVE COMMUNITY WORKFORCE AGREEMENT* 3, <https://emeraldcities.org/wp-content/uploads/2022/05/ECC-AnatomyofanEffectiveCWA220520-02.pdf> (last visited Feb. 6, 2026) [<https://perma.cc/QJ63-T3L2>]; U.S. DEP’T OF LAB., *AGREEMENTS*, *supra* note 102, at 2 (noting that neither PLAs nor CWAs require union membership for workers to be covered by the provisions).

provisions described above, but CWAs additionally contain “community-oriented commitments.”¹⁰⁹ Generally, this Article will default to referring to CWAs to capture those community-focused components but will use PLAs if the source material uses that term in lieu of CWA as the terms are often interchanged in the literature and agreements.

Common provisions in CWAs set goals for workforce demographic representation,¹¹⁰ such as hiring targets for veterans, women, or economically disadvantaged individuals.¹¹¹ Some CWAs are even more specific, such as aiming to hire people experiencing homelessness or single parents.¹¹² Other common provisions include goals to hire a certain percentage of the workforce from the local community.¹¹³ Finally, there can be provisions that help apprentices get on-the-job experience by setting target apprentice labor hours for a project.¹¹⁴

2. Pros and Cons

CWAs provide multiple benefits for employers, employees, and the broader community. For employers, one of the most important benefits is the no-strike provisions, which may either cover nearly all disputes¹¹⁵ or carve out specific exceptions for certain employer actions.¹¹⁶ These provisions can provide employers with confidence in the timeliness of projects and prevent major disruptions.¹¹⁷ As noted above, the construction industry has unique challenges related to its temporary, project-based nature, meaning that traditional labor relations (e.g., longevity in employer/employee relationships or unionization)

109. U.S. DEP’T OF LAB., AGREEMENTS, *supra* note 102, at 2; *see* FIGUEROA ET AL., *supra* note 108, at 7.

110. FIGUEROA ET AL., *supra* note 108, at 6–7.

111. *Id.* at 7.

112. U.S. DEP’T OF LAB., AGREEMENTS, *supra* note 102, at 2.

113. *Id.*; *see also* OFF. OF THE CITY MANAGER, CITY OF BERKELEY, CONTRACT AMENDMENT: COMMUNITY WORKFORCE AGREEMENT 18 (2023), <https://berkeleyca.gov/sites/default/files/documents/2023-06-27%20Item%2041%20Extending%20the%20Community%20Workforce.pdf> [<https://perma.cc/QL36-WEMN>]; L.A. CNTY PUB. WORKS, LOS ANGELES COUNTY COMMUNITY WORKFORCE AGREEMENT: 2020 ANNUAL REPORT 31 (2020), <https://dpw.lacounty.gov/contracts/CommunityWorkforceAgreement/doc/CWA-2020-Annual-Report.pdf> [<https://perma.cc/N6Q5-JNTW>].

114. JOBS FOR THE FUTURE, COMMUNITY WORKFORCE AGREEMENTS TO PROVIDE REGISTERED APPRENTICESHIP OPPORTUNITIES 2, <https://www.jff.org/wp-content/uploads/2024/01/240105-CAWBL-CWA-Fact-Sheet-JA-V4.pdf> (last visited Feb. 8, 2026) [<https://perma.cc/SN5B-LWHV>]; CLIFFTON ET AL., *supra* note 10, at 7, 9.

115. *E.g.*, L.A. CNTY, COUNTYWIDE COMMUNITY WORKFORCE AGREEMENT BY AND BETWEEN THE COUNTY OF LOS ANGELES AND THE LOS ANGELES/ORANGE COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL AND THE SIGNATORY CRAFT COUNCILS AND LOCAL UNIONS 9 (2023) [hereinafter L.A. CNTY, CWA], <https://pw.lacounty.gov/explore-public-works/uploads/2025/11/LA-County-Countywide-CWA-Agreement-1-searchable-with-Amendment.pdf> [<https://perma.cc/9YVG-F2S9>].

116. BELMAN & BODAH, *supra* note 107, at 29.

117. Glass & Walter, *supra* note 17; *see* BELMAN & BODAH, *supra* note 107, at 5–15.

are often more difficult to attain and maintain.¹¹⁸ CWAs can address some of these challenges for project sponsors because they facilitate project coordination by having all contractors and subcontractors operating under the same terms of the agreement.¹¹⁹

On the employee side, CWAs can provide the security and benefits of a union to both union and non-union workers on the project. For example, CWAs can contain health and safety provisions which ensure proper training and access to protective equipment.¹²⁰ While CWAs might not contain more than the industry standard, having standards written down is a beneficial worker tool. Data indicates that written health and safety provisions help reduce accident rates in the construction industry, which has high rates of safety concerns.¹²¹ These agreements also set wages and fringe benefits for all workers, which can result in higher wages and more benefits for workers on the project who did not previously have access to union benefits.¹²²

CWAs can benefit both employees and the broader community by creating a workforce that more accurately represents the community in which a project takes place, thereby promoting greater diversity within the construction industry. This is because CWAs contain targeted hiring or local hiring provisions, or both.¹²³ Those provisions also mean that local community members are more likely to work on the project, which in turn likely benefits the local economy by creating more spending power among employed community members.

Additionally, it is possible that CWAs could be useful long-term organizing tools to increase not only safety, wages, and diverse representation, but also union membership by fostering projects where unionized and non-unionized laborers work together, sharing what are often characterized as “union benefits.” Although empirical research on this hypothesis is currently limited, it represents a promising avenue for future study, particularly as applied to the states discussed below that are using CWAs in the clean energy sector.

CWAs, like any labor tool, are not without opposition or conflicting data regarding their impacts. While many labor advocates contend that CWAs or PLAs speed up projects and streamline processes, saving employers time and money, there is also research that suggests that CWAs can increase the overall project costs.¹²⁴ These higher costs have been linked to regional differences in unionization rates, as PLAs or CWAs can increase wage and benefit costs that are not normally borne by non-unionized construction firms, but are on par with prevailing union wages.¹²⁵ Thus, increased project costs are more likely in a

118. BELMAN & BODAH, *supra* note 107, at 5.

119. *See id.* at 5–15.; CONG. RSCH. SERV., R41310, PROJECT LABOR AGREEMENTS 4–5 (2012).

120. Glass & Walter, *supra* note 17.

121. BELMAN & BODAH, *supra* note 107, at 24–27.

122. *See* BELMAN & BODAH, *supra* note 107, at 31.

123. U.S. DEP’T OF LAB., AGREEMENTS, *supra* note 102, at 2.

124. CONG. RSCH. SERV., *supra* note 119, at 5.

125. *Id.* at 5, 8.

place like New Mexico, which has low unionization rates below the national average.¹²⁶ These potential costs could lead developers, as well as those advocating for a fast transition to clean energy, to oppose widespread implementation of CWAs out of fear that they would drive up costs and reduce political and community support for clean energy projects. However, data also indicates that the efficiencies and labor stability fostered by CWAs can counter these upfront costs and lead to faster and cheaper project completion in the long run.¹²⁷

Relatedly, there are fears that CWAs will diminish the competitive bidding power of non-unionized contractors or exclude non-union workers altogether.¹²⁸ These concerns intensified as unionization began to fall in the 1970s and 1980s and groups like the Associated Builders and Contractors (ABC), representing the interests of staunchly non-unionized construction industries, came on the scene.¹²⁹ However, most courts have held that PLAs and CWAs cannot operate exclusively with unionized contractors, nor can they lawfully exclude non-union workers.¹³⁰

From a labor advocate's perspective, one potential issue with CWAs is the no-strike provisions ubiquitous in these agreements. To safeguard worker rights, such provisions should ideally have carve-outs that allow workers to strike in the event of unsafe or illegal labor practices; otherwise, no-strike provisions can dilute worker power and protections.¹³¹ Another issue for states like New Mexico with low rates of union membership is that CWAs and PLAs are negotiated between unions and project sponsors, making union involvement a necessary component of these agreements.¹³²

However, there is some international union presence in the Southwest and in New Mexico, most prominently the International Brotherhood of Electrical Workers (IBEW). If strong international unions like IBEW support local unions in negotiating CWAs and PLAs, the limited size of the local labor movement may pose less of a barrier. A recent example of this dynamic is IBEW's PLA with Pattern Energy for the SunZia wind and transmission line project, which spans New Mexico and Arizona.¹³³

126. See Moskowitz, *UNION MEMBERSHIP*, *supra* note 5, at 12.

127. See CONG. RSCH. SERV., *supra* note 119, at 5; U.S. DEP'T OF LAB., *AGREEMENTS*, *supra* note 102, at 1.

128. BELMAN & BODAH, *supra* note 107, at 3.

129. See *id.*

130. *Id.* at 2–3.

131. See Stanley Aronowitz, *No-Strike Clauses Hold Back Unions*, LAB. NOTES (Dec. 13, 2011), <https://labornotes.org/blogs/2011/12/no-strike-clauses-hold-back-unions> [<https://perma.cc/52DU-WCLW>].

132. See U.S. DEP'T OF LAB., *AGREEMENTS*, *supra* note 102, at 1.

133. *IBEW Signs Billion-Dollar PLA for Southwest Clean Energy Transmission Line*, INT'L BHD. OF ELEC. WORKERS (Dec. 13, 2023), https://www.ibew.org/media-center/Articles/23Daily/2312/231213_SouthwestCleanEnergy [<https://perma.cc/XCT3-ZWSF>]. This is despite Arizona having

Finally, a significant drawback of CWAs is that they are project-specific and confined to the construction phase. Workers employed after the construction of a solar field, wind farm, or manufacturing plant cannot access the same protections. Nonetheless, local examples of CWA implementation, along with state legislation that incentivizes or requires CWAs, demonstrate that they remain an important tool within the broader clean energy labor-protection toolkit.

3. Examples of CWA Implementation

a. Los Angeles County, California

In 2023, Los Angeles (L.A.) County adopted a countywide CWA that covered all eligible projects.¹³⁴ The CWA contained provisions aimed at increasing the number of veterans hired on eligible projects.¹³⁵ It also contained a provision that, depending on the project's budget, required certain workforce representation goals for targeted and/or local workers.¹³⁶

Targeted and local workers were specifically defined and enumerated in the CWA.¹³⁷ For example, local residents were tiered based on residence in a qualifying zip code and proximity to the proposed project.¹³⁸ Targeted workers included migrant farmworkers, individuals who were experiencing or who had recently experienced homelessness, individuals who were formerly incarcerated, youth formerly in foster care, persons living below the Federal Poverty Level (FPL), and people with disabilities, among others.¹³⁹

Just a year after the CWA was signed, L.A. County released a report which indicated that the CWA was doing what it was intended to do—increasing local and diverse representation in the County's project-based workforce.¹⁴⁰ Some projects exceeded CWA targets, and workers shared how these CWA-covered projects provided pathways into the construction industry with opportunities to be paid well and learn on the job.¹⁴¹ Examples from other PLA- or CWA-covered projects similarly indicate that these types of provisions effectively reach impacted communities and provide well-paying employment opportunities for people with diverse backgrounds.¹⁴²

a lower unionization rate than New Mexico. BELMAN & BODAH, *supra* note 107, at 3 (noting Arizona is at 6.1 percent unionization compared to New Mexico's 8.3 percent).

134. L.A. CNTY, CWA, *supra* note 115, at 1–3.

135. *Id.* at 1, 17, 19.

136. *Id.* at Attachment D.

137. *Id.*

138. *Id.*

139. *Id.*

140. L.A. CNTY PUB. WORKS, *supra* note 113, at 31 (indicating that it had surpassed both goals for local and targeted hiring workers).

141. *See generally id.* at 19–27.

142. *See generally* Glass & Walter, *supra* note 17.

b. King County, Washington

In 2020, King County, Washington, initiated a CWA that incorporated a successful Priority Hire program implemented in 2016.¹⁴³ The Priority Hire program, as implemented through the CWA, aimed to increase the representation of workers from “economically distressed” areas in the county.¹⁴⁴ It originated as a directive from the King County Executive, who stated that many individuals in the county needed viable pathways to “family-wage” jobs.¹⁴⁵

Based on recent reporting, this initiative was very successful in surpassing its goals of inclusion of priority hires.¹⁴⁶ For example, nearly half of the priority hires were identified as minority workers thus greatly increasing representation compared to the 27 percent average in King County’s construction workforce overall.¹⁴⁷ The percentage of women hired, meanwhile, was slightly above the national average for women in the construction industry (15 percent compared to 11 percent).¹⁴⁸

In addition to priority hire efforts, the King County CWA contained provisions requiring prevailing wages, safety planning and reporting, and apprenticeship programs.¹⁴⁹ Thus, the King County example contributes to overall data suggesting that CWAs have worked to increase access to well-paying jobs, increase job safety, and improve diversity in the construction industry.

143. *Priority Hire*, KING CNTY, <https://kingcounty.gov/en/legacy/depts/finance-business-operations/business-development-contract-compliance/programs/priorityhire> (last visited Mar. 4, 2026) [<https://perma.cc/83VJ-GST7>]; *see also* KING CNTY, MASTER COMMUNITY WORKFORCE AGREEMENT BETWEEN KING COUNTY AND SEATTLE/KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL AND NORTHWEST NATIONAL CONSTRUCTION ALLIANCE II (2020) [hereinafter KING CNTY, CWA], <https://cdn.kingcounty.gov/-/media/king-county/depts/executive-services/finance-business-operations/business-development/documents/master-cwa-final-copy.pdf?rev=647fef2e482b4d4d8ca1a3e59c5d21db&hash=94A92A067D1B2E89D66350C34370FD1F> [<https://perma.cc/KZV9-WS3K>].

144. *Priority Hire*, *supra* note 143; KING CNTY, CWA, *supra* note 143, at 10, 53 (map of zip codes for Priority Hire Program).

145. Memorandum from King County Executive Dow Constantine on Priority Hire Policy at King County to Directors at King County Departments and Divisions (May 10, 2016), <https://cdn.kingcounty.gov/-/media/king-county/depts/executive-services/finance-business-operations/business-development/documents/priority-hire-directive-memo.pdf> [<https://perma.cc/GH5L-PMX7>].

146. *Priority Hire*, *supra* note 143.

147. *See id.*; WORKFORCE DEV. COUNCIL, SEATTLE-KING COUNTY WIOA LOCAL PLAN 2024-2028 DRAFT, 25 (2024), https://seakingwdc.squarespace.com/s/10DRAFT_WIOARegionalLocalPlan_WDC-SKC_03052024.pdf (discussing gender and racial demographics of the construction workforce).

148. *Id.*

149. *See generally* KING CNTY, CWA, *supra* note 143.

3. State Legislation Incentivizing Labor Agreements and Labor Protections

a. Oregon

In 2021, Oregon passed House Bill 2021, which created clean energy targets, commissioned a study on small-scale renewable energy projects, and guided how information should be disseminated to the public about clean energy projects, among many other critical provisions.¹⁵⁰ The bill was intended to ensure that the energy transition occurs “in a manner that provides additional direct benefits to communities . . . [by] creating and sustaining meaningful living wage jobs, [and] promoting workforce equity. . . .”¹⁵¹ In an effort to include labor considerations in this transition, the bill created “Responsible Contractor Labor Standards.” These standards require that anyone constructing a “large-scale project sited in this state shall . . . provide a signed attestation or declaration” stating they will comply with certain labor standards and practices.¹⁵² Such practices include participation in apprenticeship programs¹⁵³ and plans for outreach, recruitment, and retention of “women, minority individuals, veterans and people with disabilities.”¹⁵⁴ Policies designed to reduce or prevent workplace harassment and discrimination, as well as promote diverse representation, are also required.¹⁵⁵ Documentation is required to show “good faith” attempts to meet these requirements.¹⁵⁶

With respect to worker safety and wages, these standards also require anyone constructing a large scale clean energy project to demonstrate a seven-year record of compliance with state occupational safety and health regulations, workers’ compensation laws, and building codes.¹⁵⁷ Contractors must also demonstrate a history of adherence to federal and state wage and hour laws.¹⁵⁸ Finally, all contractors and subcontractors on a clean energy project are ordered to provide health care and retirement benefits to employees and pay the “area wage standard.”¹⁵⁹ To monitor compliance of these standards, Bill 2021 requires quarterly reporting to the project owner or electric utility.¹⁶⁰

However, Bill 2021 allows exemptions from the requirements outlined above if a project developer provides a copy of a PLA.¹⁶¹ The bill only provides examples of what “may” be included in a PLA, including recommendations regarding hiring practices to increase diversity and other commonly found

150. H.B. 2021, 81st Legis. Assemb., Reg. Sess. (Or. 2021).

151. *Id.* § 2(2).

152. *Id.* § 26(2).

153. *Id.* § 26(2)(a).

154. *Id.* § 26(2)(b).

155. *Id.* § 26(2)(c).

156. *Id.* § 26(2)(d).

157. *Id.* § 26(2)(f).

158. *Id.* § 26(2)(g).

159. *Id.* § 26(3).

160. *Id.* § 26(2)(d), (h); (3)(c).

161. *Id.* § 26(5).

provisions in a PLA.¹⁶² In effect, Bill 2021 incentivizes the use of PLAs because they can exempt a builder from the detailed requirements under the Responsible Labor Standards, leaving them free to negotiate their own terms. Operating under a PLA would also exempt builders from the quarterly reporting requirements.

Regardless, developers constructing clean energy projects in Oregon must either negotiate a PLA, which generally will provide wage and safety guarantees to workers, *or* comply with Oregon’s comprehensive Responsible Labor Standards. While PLAs or CWAs are not explicitly required, this law illustrates one role they can play in a workforce transition and how they can be supplemented by standards like the Responsible Labor Standards.

b. Washington

In Washington, the Clean Energy Transformation Act (CETA), enacted in 2019, governs the state’s transition to a carbon emissions-free electrical grid.¹⁶³ In the preamble, CETA emphasizes its dual goals of accelerating the clean energy transition and ensuring the “maximization of family wage job creation.”¹⁶⁴ CETA approaches workforce protections and development primarily through an employer incentive perspective. Instead of requiring labor agreements or labor standards for clean energy projects, it offers progressively greater tax credits to businesses that can show they are meeting certain labor and diversity standards.¹⁶⁵

CETA states it is Washington’s “specific public policy objective” to incentivize high labor standards on clean energy projects, including “family level wages and providing benefits including health care and pensions, as well as maximizing access to economic benefits from such projects for local workers and diverse businesses.”¹⁶⁶ For example, a developer is entitled to a 50 percent sales and use tax remittance if they contract with women-, minority-, or veteran-owned businesses, work with businesses that have a track record of complying with state and federal wage and hour laws, prioritize local hiring, and utilize apprenticeships.¹⁶⁷ If a business can meet those requirements *and* demonstrate that it pays wages consistent with “prevailing wage rates determined by local collective bargaining,” then it can apply for a 75 percent remittance.¹⁶⁸ However, if a project is certified as having been developed under a PLA or CWA, and therefore likely has protections similar to CETA, the business can receive 100 percent remittance and does not have to comply with any of the specific requirements under CETA.¹⁶⁹ At any stage, Washington incentivizes some form

162. *Id.* § 26(5)(c).

163. *See* S.B. 5116, 66th Leg., Reg. Sess. §§ 1(1–2), 1(4), 26 (Wash. 2019).

164. *Id.* § 1(1–2), (4).

165. *Id.* § 17.

166. *Id.* § 17(3).

167. *Id.* § 18(1)(c)(i)(A).

168. *Id.* § 18(1)(c)(i)(B)(IV)(ii).

169. *Id.* § 8(1)(c)(i)(B)(IV)(iii).

of labor protections and community investment, culminating in a 100 percent tax remittance as the ultimate “carrot” to encourage developers to enter into a PLA or CWA.

c. Michigan

Michigan’s integration of labor considerations into its clean energy transition emerged through permitting reforms designed to address local opposition to clean energy development.¹⁷⁰ In 2023, the state enacted multiple laws relating to a clean energy transition, including components of the Clean Energy and Jobs Act.¹⁷¹ This act sought to reduce local government barriers to clean energy project siting¹⁷² by empowering the Michigan Public Service Commission (MPSC)¹⁷³ to issue permits—preempting local authority—under certain conditions.¹⁷⁴

Within this framework, Michigan embedded labor incentives. If a developer wants to begin construction on a large-scale project,¹⁷⁵ but is being blocked by the local government, it can choose to apply for a certificate with the MPSC.¹⁷⁶ The MPSC shall grant a certificate to begin construction if an enumerated list of requirements are met, including that (1) the applicant will use “apprenticeship programs registered and in good standing with the United States Department of Labor,” (2) the applicant will pay workers “a minimum wage standard not less than the . . . rates prevailing in the locality,” and (3) “to the extent permitted by law” the developers will enter into PLAs or collective bargaining agreements.¹⁷⁷ Thus, Michigan leveraged state agency permitting not only as a means to overcome opposition from local government but also as a way to integrate labor provisions and PLAs into the process.

d. California

In 2022, California enacted AB 205, a budget trailer bill that, among other things, established the 2022 California Arrearage Payment Program (CAPP) to

170. See Matthew Eisenson, *Michigan’s New Siting Process Gives Some Authority to State Regulators, But Under What Circumstances?*, CLIMATE L.: A SABIN CTR. BLOG (Aug. 7, 2024), <https://blogs.law.columbia.edu/climatechange/2024/08/07/michigans-new-siting-process-gives-some-authority-to-state-regulators-but-under-what-circumstances> [<https://perma.cc/H4R9-W4CG>].

171. *Clean Energy Bills Signed Into Law*, MICH. HOUSE DEMOCRATS (Dec. 11, 2023), <https://housedems.com/clean-energy-bills-signed-into-law> [<https://perma.cc/ZLA6-7JFX>].

172. Eisenson, *supra* note 170.

173. See *2023 Energy Legislation*, MICH. PUB. SERV. COMM’N, <https://www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation> (last visited Nov. 7, 2024) [<https://perma.cc/C5AN-C4U5>].

174. H.B. 5120, 102nd Leg., Reg. Sess., § 231(3) (Mich. 2023).

175. *Id.* § 222(1).

176. *Id.* § 222(2). Note that a local government can request that a developer go through the MPSC instead of the local process.

177. *Id.* § 226(7)(e).

help residential customers pay COVID-19-related utility arrearages¹⁷⁸ and created a new, optional state-level permitting process for certain clean energy manufacturing projects.¹⁷⁹ Similar to Michigan's bill, AB 205 enables developers to request project approval through the California Energy Commission (CEC) instead of local governments.¹⁸⁰

Any covered project submitted to the CEC for approval must meet certain labor standards.¹⁸¹ The exact requirements depend on whether the project is classified as a "public work" under the California Labor Code; if it is not a public work, then the CAPP requirements apply.¹⁸² CAPP requirements include prevailing wages, apprenticeships, and record keeping.¹⁸³ Additionally, employers can be subjected to civil wage penalties and enforcement actions by the California Labor Commissioner for failure to comply.¹⁸⁴

If, however, the project is subject to a PLA, certain record-keeping and state-enforcement requirements do not apply,¹⁸⁵ provided that the PLA includes prevailing wage standards, targeted hiring practices, and certain apprenticeship provisions.¹⁸⁶ In this way, California leverages AB 205's opt-in permitting framework to encourage the use of PLAs for non-public-works clean energy projects by offering a streamlined compliance pathway when such agreements are in place.

4. Implementing CWAs in New Mexico

As described above, CWAs can serve as effective tools at the local or state level to ensure certain wage, benefit, and safety requirements, while also advancing broader workforce goals such as local hiring, increased diversity in construction, and expanded apprenticeship opportunities. New Mexico took substantial steps towards a clean energy transition with the passage of the ETA in 2019 and did not omit labor considerations from the legislation.¹⁸⁷ Indeed, some characterized the state's efforts to transition away from coal-based economies as laudable for its focus on supporting workers and communities most impacted by the transition.¹⁸⁸

178. A.B. 205, 2021 Cal. Assemb., Reg. Sess. § 16429.8 (Cal. 2022).

179. MARISA SOTOLONGO, INITIATIVE FOR ENERGY JUST., STATE LEGISLATIVE REQUIREMENTS FOR COMMUNITY BENEFITS AGREEMENTS IN RENEWABLE ENERGY PROJECTS 5 (2024), <https://iejusa.org/wp-content/uploads/2024/12/FINAL-12.5-CB-State-Legislative-Requirements-1.pdf> [https://perma.cc/5JQB-ZB7R].

180. A.B. 205 § 25545.1; *see also* SOTOLONGO, *supra* note 179, at 4–6.

181. *Id.* § 25545.3.3.

182. *Id.*

183. *Id.* § 25545.3.3(b).

184. *Id.* § 25545.3.3(b)(4–5).

185. *Id.* § 25545.3.3(b)(6).

186. *Id.*

187. *See supra* pp. 19–20.

188. *Energy Transition Act*, 350 N.M., https://350newmexico.org/increase_renewable_portfolio_standards_bill_2019 (last visited Nov. 7, 2024) [https://perma.cc/5RQB-D6KX]; *How States Are*

When New Mexico begins addressing other fossil fuel sectors (e.g., natural gas power plants or oil and gas production) as part of the clean energy transition, providing support comparable to that offered under the ETA will be critical.¹⁸⁹ In the meantime, the state should also look to the future of clean energy production and the quality of jobs associated with a decarbonized grid.

As renewable energy buildouts accelerate, CWAs offer New Mexico a concrete mechanism to promote family-sustaining wages, comprehensive benefits, safe working conditions, and opportunities to diversify representation within the energy economy. As noted above, CWAs are not a one-size-fits-all solution as they can only cover construction, and they are only project-based. However, recent data indicate that about half of all clean energy employment in New Mexico consists of utility system construction, building equipment contracting, and heavy civil engineering construction,¹⁹⁰ with around one in five clean energy jobs held by construction workers.¹⁹¹ This suggests that a substantial portion of the state's clean energy workforce could be covered by and benefit from CWAs.

Not only could CWAs cover at least 20 percent of clean energy workers in New Mexico, but they could also address other important issues for New Mexico communities. Clean Energy Workforce development data in New Mexico indicates that communities are looking for both better-paying and safer jobs, *and* they are also concerned about diversifying the clean energy workforce.¹⁹² CWAs, based on the data coming out of King County and Los Angeles, indicate that targeted hiring provisions are effective means by which governments can provide pathways into construction and energy-related fields for historically underrepresented groups.

New Mexico has several examples from other states of how CWAs can be incentivized. Although no data has been published on how many businesses qualified for Washington's tax credits, the framework provided a powerful incentive for developers to construct clean energy projects under a PLA by offering 100 percent remittance of state and local taxes. Tax credits are commonly used to attract business to an area,¹⁹³ so some form of tax credit for labor protections could be both feasible and strategic for New Mexico. However,

Centering Workers in the Clean Energy Transition, EVERGREEN ACTION (Jan. 24, 2024), <https://www.evergreenaction.com/blog/how-states-are-centering-workers-in-the-clean-energy-transition> [https://perma.cc/8KZE-XPWL].

189. See SANCHEZ YOUNGMAN ET AL., *supra* note 47, at 36–37.

190. N.M. DEP'T OF WORKFORCE SOLS., NEW MEXICO CLEAN ENERGY WORKFORCE DEVELOPMENT STUDY 53 (2020), https://www.dws.state.nm.us/Portals/0/DM/LMI/NM_Clean_Energy_Workforce_Report.pdf [https://perma.cc/35EC-ZWYQ].

191. *Id.* at 24–25.

192. *Id.* at 21.

193. Christian Gonzales, Mike Kerlin, Rachel Schaff, & Sarah Tucker-Ray, *How State and Local Governments Win at Attracting Companies*, MCKINSEY & CO. (Sept. 13, 2019), <https://www.mckinsey.com/industries/public-sector/our-insights/how-state-and-local-governments-win-at-attracting-companies> [https://perma.cc/XH6D-HP5U].

Washington's incentive-based program did not require any equity-focused provisions in the PLAs.¹⁹⁴ Should New Mexico consider passing comparable legislation, it would be in the best interests of communities and workers to require some language around targeted hiring, workplace safety, and fair wage and benefit guarantees.

However, Washington and New Mexico differ greatly in budgetary resources,¹⁹⁵ and New Mexico's budget remains heavily reliant on oil and gas revenues.¹⁹⁶ Foregoing non-oil and gas state revenue through tax remittances on clean energy projects could undermine the state's fiscal stability during the transition, as New Mexico will likely need to generate—not waive—tax revenue during its clean energy expansion.

Oregon's approach may offer a more strategic model for New Mexico, especially with regard to guaranteeing some level of worker protections in the clean energy sector. Oregon requires developers of clean energy projects to either comply with specific labor practices or to enter into a PLA in lieu of those requirements. As discussed above, this framework incentivizes PLAs, since developers seeking more flexibility in negotiating terms can still benefit from the advantages they provide, such as no-strike provisions and project coordination. Thus, New Mexico could incentivize CWAs and strengthen labor protections without sacrificing state revenue.

On the other hand, there are non-unionized developer groups that strongly oppose the use of PLAs or CWAs, including in New Mexico. In 2012, the City of Santa Fe, New Mexico, required a CWA for projects using more than \$500,000 of city funding.¹⁹⁷ The Association of Builders and Contractors successfully organized to have this CWA requirement repealed.¹⁹⁸ Though New Mexico is not among them, twenty-five states have prohibitions against PLA requirements, one as recently as 2023.¹⁹⁹ To navigate this opposition, New Mexico could adopt a hybrid approach that allows CWAs as an option while also

194. See S.B. 5116, 66th Leg., Reg. Sess. § 18 (Wash. 2019) (containing no further requirements for a PLA).

195. *Compare State Fiscal Briefs: Washington*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-briefs/washington> (last visited Mar. 16, 2026) [<https://perma.cc/M4SA-TVXL>] (\$72 billion for general fund spending), *with State Fiscal Briefs: New Mexico*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-briefs/new-mexico> (last visited Mar. 16, 2026) [<https://perma.cc/A58M-7EKT>] (\$10.2 billion in general fund spending).

196. See N.M. LEGIS. FIN. COMM., PRESENTATION, *supra* note 82, at 12.

197. Santa Fe, N.M., Ordinance 2012-12 (Feb. 29, 2012).

198. Gary Gerew, *Santa Fe Repeals Workforce Agreement Rules*, ALBUQUERQUE BUS. FIRST (Feb. 28, 2013), <https://www.bizjournals.com/albuquerque/blog/morning-edition/2013/02/santa-fe-repeals-workforce-agreement.html> [<https://perma.cc/7S6Z-N6EV>]; see also Santa Fe, N.M., Ordinance 2013-10 (Feb. 27, 2013).

199. *State Fair and Open Competition/Anti-Government-Mandated PLA Measures*, THE TRUTH ABOUT PLAS, <https://www.abc.org/Portals/1/2023/Politics%20Policy/Current-State%20FOCA-Laws%20GMPLA%20Bans%20through%20Wyoming%20Updated%20March%202023.xlsx?ver=s7UjTDwzb4TjGfOMOmOBw%3d%3d> (last updated Mar. 2023) [<https://perma.cc/4L53-SRHY>].

requiring “Responsible Labor Standards” for projects that do not implement them. This approach would ensure baseline labor protections even if political resistance to PLAs grows stronger.

Another possibility is to integrate CWAs or PLAs into the state’s permitting process, similar to the Michigan model. Michigan’s law does not require PLAs but does appear to require a showing that the developer attempted to enter into a PLA or CWA, accompanied by other labor considerations. Because there are no tax incentives, it avoids the economic concerns associated with revenue loss. Additionally, the labor provisions in Michigan’s legislation are not as comprehensive as Oregon’s, which could make passing the legislation easier. However, because the labor provisions are not as substantial, and the requirements and incentives are not as strong, this could be seen as less transformative with regard to clean energy labor protections.

Similarly, California’s PLA standards are fairly standard and should be more acceptable to possible industry opponents as they merely address apprenticeship and wages. However, California’s approach to incentivizing PLAs works in part because of the threat of enforcement actions and record-keeping requirements imposed by the Labor Division. New Mexico does not have such a robust labor code and lacks the resources California has for enforcement actions.²⁰⁰ Thus, California’s approach may be less effective at incentivizing PLAs in New Mexico.

One last option that New Mexico could explore is requiring CWAs for any projects that receive a certain amount of public funding. This approach mirrors those adopted by Bernalillo County,²⁰¹ L.A. County,²⁰² and the federal government.²⁰³ Local municipalities could also pursue this strategy for clean energy construction, particularly when developers might need to get local permitting approval or tap into local government funds. It is also possible that New Mexico’s governor could advance this approach through an executive order—similar to President Biden’s Executive Order 14,063—should legislative resistance pose a barrier. This approach would still have to contend with similar pushbacks from anti-labor agreement organizations or concerns about cost or project timeline impacts. Additionally, it would lack the benefits of the laws in Washington, Oregon, and Michigan that have language to encourage labor protections outside of a PLA or CWA.

200. For an overview of California’s labor code, see Dylan Ruga, *How is California Employment Law Different from Other States?*, STALWART L. GRP. (Aug. 25, 2023), <https://stalwartlaw.com/how-is-california-employment-law-different-from-other-states> [https://perma.cc/9SDF-ZLW3].

201. BERNALILLO CNTY., COMMUNITY WORKFORCE AGREEMENT BETWEEN BERNALILLO COUNTY AND THE NEW MEXICO BUILDING AND CONSTRUCTION TRADES COUNCIL AND SOUTHWEST REGIONAL COUNCIL OF CARPENTERS 3–4 (2022), <https://www.bemco.gov/business-services/wp-content/uploads/sites/78/2022/12/Community-Workforce-Agreement-Final.pdf> [https://perma.cc/Y9EX-826L].

202. L.A. CNTY, CWA, *supra* note 115, at 1–3.

203. Exec. Order No. 14,063, 87 Fed. Reg. 7363, 7363–64 (Feb. 4, 2022).

In sum, New Mexico can take meaningful steps toward securing stronger labor protections in the clean energy sector by enacting legislation modeled after other states' legislation that has successfully encouraged labor agreements and, more generally, integrated pro-labor language and requirements throughout their statutory frameworks.

B. Community Benefit Agreements

1. Overview

Since CWAs are project-based, limited to the construction industry, and negotiated by unions, they are not a widely applicable solution to bridge the unionization gap. Another tool that could be used in conjunction with, or in place of, CWAs is CBAs. CBAs are not restricted to the construction industry nor focused solely on labor conditions.²⁰⁴ Instead, they are private contracts that incorporate community needs and voices into projects, provide monetary benefits to communities, and require certain actions or commitments from the developers, which can include labor provisions.²⁰⁵ In exchange, developers receive community support (or at least a lack of direct opposition) for their projects.²⁰⁶ CBAs emerged in the 1990s as a tool that communities could use to exert greater influence over local development processes.²⁰⁷ Rather than following a one-size-fits-all approach, CBAs are negotiated on a case-by-case basis, shaped by the priorities of developers and communities (at least, those at the negotiating table).²⁰⁸ They can be initiated by any party, including local governments, and can address a range of concerns from affordable housing needs and community program funding to targeted hiring and environmental protection clauses.²⁰⁹ Some CBAs also include provisions for scholarship programs, job training, or internet access.²¹⁰ Although CBAs are now primarily used in urban

204. See SALKIN, *supra* note 9; MATTHEW EISENSEN & ROMANY M. WEBB, EXPERT INSIGHTS ON BEST PRACTICES FOR COMMUNITY BENEFITS AGREEMENTS, SABIN CTR. FOR CLIMATE CHANGE L. 3–4 (2023), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1207&context=sabin_climate_change [<https://perma.cc/4M4W-FB9C>].

205. SALKIN, *supra* note 9; EISENSEN & WEBB, *supra* note 204, at 3.

206. OFF. OF ECON. IMPACT & DIVERSITY, U.S. DEP'T OF ENERGY, GUIDE TO ADVANCING OPPORTUNITIES FOR COMMUNITY BENEFITS THROUGH ENERGY PROJECT DEVELOPMENT 6 (2017), <http://staging.community-wealth.org/sites/clone.community-wealth.org/files/downloads/CBA%20Resource%20Guide.pdf> [<https://perma.cc/RS8B-UALL>].

207. Patricia E. Salkin & Amy Lavine, *Understanding Community Benefit Agreements*, 26 UCLA J. ENV'T'L L. & POL'Y 291, 293 (2008).

208. *Id.* at 293–94.

209. *Id.*

210. CITY OF RICHMOND, CHEVRON REFINERY MODERNIZATION PROJECT ENVIRONMENTAL AND COMMUNITY INVESTMENT AGREEMENT 6–8 (2014), <https://climate.law.columbia.edu/sites/default/files/content/CBAs/Richmond-Chevron%20Refinery.pdf> [<https://perma.cc/F2VL-VCDP>].

development projects—such as stadiums,²¹¹ retail centers,²¹² and housing²¹³—they have also been used in fossil projects.²¹⁴

2. *Pros and Cons*

Building community support is crucial for advancing the clean energy transition, as opposition, as seen in Michigan, can stymie the transition.²¹⁵ Building this support through legally binding agreements can provide many benefits for local communities. In addition to the jobs provided by fossil fuel extraction, many communities have long relied on indirect economic benefits from the fossil fuel industry. In New Mexico, oil and gas royalties contribute significantly to the state budget and, in turn, to public services.²¹⁶ Fossil fuel projects also contribute to local economies. The coal-powered San Juan Generating Plant in northwestern New Mexico, for example, contributed nearly all the funding for local schools via tax revenue—funding that is now in flux as this plant is phased offline.²¹⁷ In a state with limited resources, those revenues must be replaced, and new benefits must be directed toward the communities where clean energy build-outs are occurring. Communities cannot be left out of the equation.

Historically, low-income communities, rural communities, and communities of color have been forced out of decision making when it comes to how and where projects are developed.²¹⁸ As discussed, CWAs are typically between developers (or municipalities) and unions, meaning that community organizations and members often lack a seat at the table.²¹⁹ However, clean energy projects can proceed with a stronger community *and* labor focus by including CBAs in the process.

Proponents emphasize that one of the greatest strengths of CBAs is the community's direct role in the development process because they have a seat at

211. *E.g.*, CNTY. OF ERIE, COMMUNITY BENEFITS AGREEMENT (2023), <https://climate.law.columbia.edu/sites/default/files/content/CBAs/Bufalo%20Bills.pdf> [<https://perma.cc/G4J3-ALXB>].

212. *E.g.*, DEARBORN COMMUNITY BENEFITS AGREEMENT (2008), <https://pugetsoundsage.org/programs/equitable-development/dearborn-cba/> [<https://perma.cc/WV6U-SUA7>].

213. *E.g.*, BALLPARK VILLAGE PROJECT: COMMUNITY BENEFITS AGREEMENT (2005), <https://climate.law.columbia.edu/sites/default/files/content/CBAs/Ballpark%20Village%20CBA.pdf> [<https://perma.cc/47XN-PSGK>]; CITY OF L.A., COMMUNITY BENEFITS PROGRAM: NORTH HOLLYWOOD MIXED-USE REDEVELOPMENT PROJECT (2001), <https://climate.law.columbia.edu/sites/default/files/content/CBAs/North%20Hollywood%20Community%20Benefits%20Program.pdf> [<https://perma.cc/R83F-8MX6>].

214. *E.g.*, CITY OF RICHMOND, *supra* note 210, at 1.

215. *See* Eisenson, *supra* note 170.

216. *See* N.M. LEGIS. FIN. COMM., PRESENTATION, *supra* note 82, at 2, 12.

217. Alice Fordham, *Despite Promises of Help, A Community Struggles After San Juan Generating Station Closes*, KUNM (Dec. 21, 2022), <https://www.kunm.org/local-news/2022-12-21/despite-promises-of-help-a-community-struggles-after-san-juan-generating-station-closes> [<https://perma.cc/8Q9L-RM63>].

218. *See* Salkin & Lavine, *supra* note 207, at 298–99.

219. *See supra* pp. 21–23.

the table.²²⁰ CBAs improve upon the indirect representation of CWAs, where participation in the bargaining process is, perhaps ineffectively, mediated by local boards or officials.²²¹ CBAs also enable meaningful community participation even when local control is limited or preempted by state or federal authority.²²² This is particularly relevant in New Mexico, where 43 percent of the state's land is owned by the state or federal government,²²³ meaning that clean energy development will likely involve federal or state permitting processes that can preempt local government laws or processes.²²⁴ While federal or state processes may include public comment opportunities, CBAs could substantially increase public input through the agreement negotiation process.²²⁵ Finally, CBAs can address labor concerns in a way that other processes might not be able to by including requirements for local hiring targets, anti-discrimination policies, training, and payment of prevailing wages.²²⁶ Moreover, by playing a different role than they do in CWAs, unions can serve as a negotiating "community" party in CBAs.²²⁷

However, CBAs have potential drawbacks that must be accounted for during planning and implementation. For a CBA to benefit a community, that community needs to be representative of the local population. This requires substantial and equitable coalition building to ensure a diverse range of voices is included at the negotiating table; otherwise, CBAs risk perpetuating common flaws in land use decision-making, where a select few make choices on behalf of many.²²⁸ Another issue that must be accounted for is the risk that the community negotiating the CBA will be at a power and monetary imbalance compared to the developer.²²⁹

There is also the concern that CBAs could discourage development by imposing more requirements on developers. This concern is particularly relevant to the clean energy transition in New Mexico, where investment is needed to

220. Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5, 15–16 (2010).

221. *Id.*

222. *Id.* at 16–17.

223. 31.7 percent, or 24,665,774 of New Mexico's 77,766,400 acres are federally owned. CAROL HARDY VINCENT & LAURA A. HANSON, CONG. RSCH. SERV., R42346, *FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 8* (2020). The New Mexico State Land Office owns nine million surface acres. *About*, N.M. STATE LAND OFF., <https://www.nmstatelands.org/about> (last visited Nov. 3, 2024) [<https://perma.cc/EJF2-SDX5>]. Combining the federally and state-owned lands, 43 percent of New Mexico's land is publicly owned.

224. Been, *supra* note 220, at 16.

225. *See id.*

226. *See id.* at 7, 17.

227. *See* DEP'T OF ENERGY, *FAQ: COMMUNITY BENEFITS AGREEMENTS 2*, <https://www.energy.gov/sites/default/files/2024-12/CBA%20Guidance%20FAQ.pdf> (last visited Nov. 24, 2025) [<https://perma.cc/TU2X-3DVD>]; *Key Reforms: Community Benefits Agreements*, GOOD JOBS FIRST, <https://goodjobsfirst.org/key-reforms-community-benefits-agreements> (last visited Nov. 24, 2025) [<https://perma.cc/4U8B-JAJB>].

228. *See* Been, *supra* note 220, at 21–22; Salkin & Lavine, *supra* note 207, at 320–21.

229. Salkin & Lavine, *supra* note 207, at 321–23.

diversify away from oil and gas.²³⁰ However, as noted above, CBAs can in fact reduce opposition to development by ensuring that communities can provide their input and exert some control over the process.

CBAs also raise legal considerations, mostly related to their enforceability and, in some cases, their validity when local governments are a party to the CBA.²³¹ Because CBAs are contracts, questions often arise as to who has standing to enforce them and how certain provisions will be effectuated.²³² However, many of these concerns can be addressed in the drafting stage—for example, by creating discrete deliverables, concrete timelines, and specifying parties to the agreement who will have enforcement authority.²³³

3. Examples of CBA Implementation

The Sabin Center for Climate Change Law (Sabin Center) hosts a CBA database of publicly available contracts.²³⁴ Based on the Sabin Center’s summary of the available CBAs, many appear to be focused on monetary donations to host communities.²³⁵

a. Ripley, New York

In December 2021, the town of Ripley, New York, entered into an agreement with a solar company, through which the company agreed to “host community benefit payments” in exchange for the town’s support through consultation and permitting approvals.²³⁶ The payment amounts were based on the “MWac of installed solar nameplate . . . capacity.”²³⁷ This exchange of financial contributions for municipal support of the project was the main feature of the CBA (referred to as a Host Community Agreement because the two negotiating parties were the town government and the development company, rather than a community organization).²³⁸ Notably, the agreement did not specify how the funds would be spent, leaving this to the town’s discretion.

230. Been, *supra* note 220, at 29; *see supra* Part I.E.

231. *Id.* at 13–14 (citing Supreme Court precedent that restricts local government demands on developers during the land use approval process); Salkin & Lavine, *supra* note 207, at 327.

232. Salkin & Lavine, *supra* note 207, at 325–27; Been, *supra* note 207, at 29–31.

233. *See* Salkin & Lavine, *supra* note 207, at 325–27; Been, *supra* note 220, at 29–31.

234. *Community Benefits Agreements Database*, SABIN CTR. FOR CLIMATE CHANGE L., <https://climate.law.columbia.edu/content/community-benefits-agreements-database> (last visited Nov. 7, 2024) [<https://perma.cc/H2SU-QAPD>].

235. *Id.*

236. TOWN OF RIPLEY, HOST COMMUNITY AGREEMENT FOR THE SOUTH RIPLEY SOLAR PROJECT 1 (2021), <https://climate.law.columbia.edu/sites/default/files/content/CBAs/01.%20Town%20of%20Ripley%20Agreement.pdf> [<https://perma.cc/KFJ3-9AVW>].

237. *Id.* at 4. Nameplate capacity is defined as the “maximum rated output of . . . electric power production equipment under specific conditions designated by the manufacturer.” *Glossary: Generator Nameplate Capacity (installed)*, U.S. ENERGY INFO. ADMIN., [https://www.eia.gov/tools/glossary/index.php?id=Generator%20nameplate%20capacity%20\(installed\)](https://www.eia.gov/tools/glossary/index.php?id=Generator%20nameplate%20capacity%20(installed)) (last visited Nov. 30, 2024) [<https://perma.cc/UF6E-XDNU>].

238. *See* TOWN OF RIPLEY, *supra* note 236, at 1.

b. Richmond, California

On the other end of the spectrum was the 2014 CBA between Richmond, California, and Chevron for a refinery modernization project.²³⁹ Like the Ripley agreement, it required payments to the community, but, unlike Ripley, the Richmond CBA clearly specified how those funds were to be used.²⁴⁰ Pursuant to California environmental regulations, Chevron was already required to comply with certain air quality targets.²⁴¹ However, the City of Richmond negotiated additional community investments with Chevron.²⁴² In total, Chevron agreed to pay Richmond \$80,000,000, with the city designating how those funds would be spent.²⁴³

Under the agreement, funding would be dedicated to community programs at the “sole discretion [of the city] with advice from Richmond residents and stakeholders. . . .”²⁴⁴ Funding would create a scholarship specifically for local Richmond students, and both Chevron and the City would select a non-profit to run the program.²⁴⁵ There were job provisions with funding going to programs “relating to skills, job training and readiness, and job transition training . . .”²⁴⁶ Public safety and internet access were also funded.²⁴⁷ A competitive grant program was created to support youth and community-focused programming.²⁴⁸ Finally, funding to help municipal carbon emissions reductions were agreed to, including funding to reduce transportation-related emissions, expand the urban tree canopy, develop a climate action plan, and install rooftop solar.²⁴⁹

This agreement went further than the Ripley CBA by including employment and local hiring clauses. These clauses required good faith efforts to prioritize local hiring, utilize apprenticeship programs, and extend preferences to local businesses.²⁵⁰ Chevron also agreed to lease land for a utility-scale photovoltaic solar farm, indicating that fossil fuel CBAs themselves can serve as a transition tool to promote clean energy projects.²⁵¹ Notably, this was not the first time the City of Richmond had entered into such an agreement with Chevron; a previous 2008 agreement had similarly specified funding obligations to projects such as workforce development, public safety, and community

239. CITY OF RICHMOND, *supra* note 210.

240. *Id.* at 6–13.

241. *Id.* at 1–2.

242. *Id.* at 2–3.

243. *Id.* at 4.

244. *Id.* at 6.

245. *Id.* at 6–7.

246. *Id.* at 7.

247. *Id.* at 8.

248. *Id.* at 8–10.

249. *Id.* at 11–14.

250. *Id.* at 14–16.

251. *Id.* at 17.

programming.²⁵² While the focus of this paper is on the clean energy economy, this CBA provides an example of how fossil fuel communities can also garner additional benefits and secure job protections.

c. New Flyer CBA

An example of a CBA negotiated entirely by private parties is the 2022 agreement among New Flyer, Greater Birmingham Ministries, and Jobs to Move America (JMA).²⁵³ The CBA covers two of New Flyer's bus manufacturing facilities in Alabama and California²⁵⁴ and was created as a way to settle disputes between the parties by reaching compromises that advanced both workforce equity and the production of electric buses.²⁵⁵ The bulk of the CBA was focused on workforce development and career pathways for "Historically Disadvantaged People."²⁵⁶ Its provisions included targeted hiring and promotion goals, bilingual outreach, creation of a pre-apprenticeship program, and measures to address transportation barriers that prevent access to employment. The CBA also included internal anti-discrimination policies.²⁵⁷

Unlike many CBAs between developers and local governments, the New Flyer CBA did not include direct payments to communities. Instead, it provided detailed workforce development and diversification provisions,²⁵⁸ aligning it more closely in structure to a CWA, though it lacked some of the more formal wage and benefit provisions seen in CWAs. Thus, private sector CBAs offer an opportunity for responsible companies to advance labor and social objectives outside of the realm of publicly funded projects. However, because JMA was able to leverage litigation to pressure New Flyer into negotiations—and possessed the organizing power and resources to sustain that effort—this model is not readily replicable in all contexts.²⁵⁹

252. See generally CITY OF RICHMOND, RICHMOND COMMUNITY BENEFITS AGREEMENT (2008), <https://www.ci.richmond.ca.us/DocumentCenter/View/3581/Richmond-Community-Benefits-Agreement?bidId=> [<https://perma.cc/28VR-9FN2>].

253. COMMUNITY BENEFITS AGREEMENT BETWEEN NEW FLYER OF AMERICA INC. AND GREATER BIRMINGHAM MINISTRIES AND JOBS TO MOVE AMERICA (2022), https://climate.law.columbia.edu/sites/climate.law.columbia.edu/files/content/CBAs/CBA_05-24-2022_New-Flyer-Executed.pdf [<https://perma.cc/X952-P9GC>].

254. *Id.* at 1.

255. See *id.*

256. *Id.* at 2–3 (defining Historically Disadvantaged People as "Black, Indigenous, and/or People of Color; women; LGBTQ+ persons; Systems-Impacted People . . . persons emancipated from the foster-care system; residents of Anniston, Alabama lacking GED or high school diploma; and veterans").

257. *Id.* at 3–7.

258. *Id.* at 3–6.

259. See Devashree Saha, *Community Benefits Snapshot: New Flyer Community Benefits Agreement*, WORLD RES. INST. (Dec. 19, 2024), <https://www.wri.org/snapshots/community-benefits-snapshot-new-flyer-community-benefits-agreement> [<https://perma.cc/DX4G-FCAQ>].

d. New Mexico

The Sabin Center and the World Resources Institute do not list any CBAs for New Mexico.²⁶⁰ However, the National Renewable Energy Laboratory²⁶¹ has compiled examples of community benefits associated with onshore wind energy projects in the state.²⁶² None of these examples constitute formal agreements like those in Ripley or Richmond; rather, they reflect voluntary contributions made by onshore wind developers²⁶³ to local organizations, school districts, and emergency relief funds that have not been memorialized in a CBA.²⁶⁴

One notable exception is a CBA between at least one community and SunZia for a major electric transmission line associated with a multistate clean energy transmission project.²⁶⁵ The contents of that formal agreement are not yet publicly available.²⁶⁶ While the effectiveness and impact of the agreement will depend on its specific provisions, it is a positive sign that private energy companies are opting into using this community tool, modeling CBA use for future projects and companies. It may also help normalize the use of CBAs in a state with little prior experience with such agreements.

That being said, the SunZia project has faced substantial criticism from Tribes in southern Arizona for inadequate and ineffective consultation.²⁶⁷ This criticism underscores that, although a CBA can be a valuable mechanism for facilitating community participation and securing local benefits, it cannot substitute for other essential engagement processes such as formal Tribal

260. *Community Benefits Agreements Database*, *supra* note 234; *Database of Community Benefits Frameworks Across the United States*, WORLD RES. INST., <https://www.wri.org/cbf-database> (last visited July 4, 2025) [<https://perma.cc/5CL7-JEF6>].

261. The National Renewable Energy Laboratory (recently renamed the National Laboratory of the Rockies) is “the U.S. Department of Energy’s primary national laboratory for energy systems.” *About the National Laboratory of the Rockies*, NAT’L LAB’Y OF THE ROCKIES, <https://www.nlr.gov/about> (last visited Mar. 16, 2026) [<https://perma.cc/QRP3-NBEL>].

262. *Local Benefit Mechanisms*, U.S. DEP’T OF ENERGY, https://windexchange.energy.gov/projects/community-benefit-agreements?by_category=true&state=NM&all_infrastructures=true&all_benefits=true&commit=Search (last visited Nov. 7, 2024) [<https://perma.cc/C2PT-LFZD>].

263. *Id.* (search “New Mexico” in the search bar and check the “Formal agreement” box under “Form of Benefit”).

264. *Id.* (Broadview, Grady, Oso Grande, and Western Spirit examples).

265. See Sierra Cnty. Bd. Of Cnty. Comm’rs, Res. 110-086 (Jan. 21, 2022), <https://www.sierraco.org/wp-content/uploads/110-086-Resolution-Approving-Request-of-Sunzia-high-voltage-transmission-lines-2022-06-21.pdf> [<https://perma.cc/R6QZ-XPU2>]. For more information on the SunZia Transmission Project, see *Biden-Harris Administration Celebrates Groundbreaking of New SunZia Transmission Line*, U.S. DEP’T OF THE INTERIOR (Sept. 1, 2023), <https://www.doi.gov/pressreleases/biden-harris-administration-celebrates-groundbreaking-new-sunzia-transmission-line> [<https://perma.cc/XU6R-CQ64>].

266. Currently, the only publicly available information is the fact that SunZia worked with Sierra County, New Mexico to develop a CBA. See Sierra Cnty. Bd. Of Cnty. Comm’rs, Res. 110-086.

267. Susan Montoya Bryan, *Appeals Court Revives Native American Challenge to SunZia Energy Transmission Project*, SANTA FE NEW MEXICAN, https://www.santafenewmexican.com/news/local_news/appeals-court-revives-native-american-challenge-to-sunzia-energy-transmission-project/article_106935b1-1a8d-522d-b68c-52acb6088777.html (last updated July 5, 2025) [<https://perma.cc/FQB6-W3LL>].

consultation. Rather, CBAs should function as one component of a broader suite of tools designed to ensure meaningful, inclusive, and equitable community engagement throughout the clean energy buildout.

According to the Department of Energy, community benefit discussions for offshore wind energy projects tend to be more formal and more likely to result in a CBA.²⁶⁸ Similar discussions for onshore wind projects rarely, if ever, result in formal agreements, meaning there is likely more variety in the form they take and the benefits they provide.²⁶⁹ A state like New Mexico may therefore benefit from adopting a more formalized process requiring CBAs for onshore wind and other clean energy projects, ensuring communities receive consistent, enforceable, and equitable benefit provisions.

4. Legislation Incentivizing CBAs

What does it look like to require or incentivize CBAs in legislation? Recent federal investments in infrastructure—including clean energy infrastructure—have incorporated requirements for Community Benefit Plans.²⁷⁰ However, unlike CBAs, these plans are not legally binding agreements and instead simply lay out a framework for the development of community engagement, workforce development, and equity with no legally binding components.²⁷¹ Requirements for CBAs in clean energy projects have thus predominantly been implemented at the state level, underscoring the significant and continuing role that local and state legislation play in shaping the use and effectiveness of CBAs.

a. Connecticut

Connecticut was the first state to make a statutory reference to CBAs in 2008 with Public Act No. 08-94, an environmental justice law.²⁷² There was no further action until 2020, when Connecticut amended the 2008 law,²⁷³ requiring CBAs for certain types of projects in “environmental justice communit[ies]” that have a high density of polluting facilities in the area.²⁷⁴ The law explicitly excludes renewable energy projects, instead targeting “dirty” industries such as heavy manufacturing.²⁷⁵ Thus, while Connecticut’s law does not apply to clean

268. *Wind Energy Community Benefits Guide*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY, U.S. DEP’T OF ENERGY, <https://www.energy.gov/eere/wind/windexchange/wind-energy-community-benefits-guide> (last visited Mar. 16, 2026) [<https://perma.cc/KJU8-WYNN>].

269. *Id.*

270. See Said et al., *supra* note 17; *About Community Benefits Plans*, *supra* note 36.

271. Said et al., *supra* note 17.

272. See SALKIN, *supra* note 9.

273. ENV’T L. JUST. CLINIC, VT. L. & GRADUATE SCH., A SEAT AT THE TABLE: A VISION FOR CONNECTICUT’S ENVIRONMENTAL JUSTICE LAW 3 (2022), https://www.vermontlaw.edu/wp-content/uploads/2024/07/connecticut-report-executive-summary_environmental-justice-clinic_20220812-1.pdf [<https://perma.cc/7C8E-V97B>].

274. H.B. 7008, 2020 Leg., Sept. Spec. Sess. § 1(c) (Conn. 2020).

275. *Id.* § 1(a)(2) (defining “affecting facility” to not include those powered by renewable sources).

energy, it serves as an example of how states can better protect fossil-fuel-impacted communities during the energy transition.

b. Maryland

In 2019, when many states were passing laws regarding the energy transition,²⁷⁶ Maryland passed its own transition law that included incentives for CBAs.²⁷⁷ The statute identified two primary objectives for increasing its reliance on renewable energy:²⁷⁸ (1) reduce greenhouse gas emissions, and (2) “provide opportunities for small, minority, women-owned, and veteran-owned businesses to participate in and develop a highly skilled workforce for clean energy industries in the state.”²⁷⁹

Maryland’s law formally defined CBAs and specified provisions that must be included to meet the requirements of the law.²⁸⁰ First, a CBA must promote small, minority, women-owned, and veteran-owned business involvement in clean energy.²⁸¹ Second, it must work to increase project safety through training workers, hiring skilled workers, and requiring Occupational Safety and Health Administration (OSHA) safety courses for workers.²⁸² Finally, a CBA must promote opportunities to increase the representation of local residents, women, minorities, and veterans in construction jobs, and reflect modern labor policies of “cooperation, harmony, and partnership.”²⁸³ These requirements apply specifically to offshore wind projects, which must secure Public Service Commission approval.²⁸⁴ Certain provisions, such as targeted hiring and business participation, also require annual reporting to track progress and accountability.²⁸⁵

c. Michigan

Michigan’s recent Clean Energy and Jobs Act, which expedites permitting and siting for clean energy projects, also incorporates CBAs.²⁸⁶ In order to receive a certificate from the MPSC, the developer is required to enter into a CBA with the host community, referred to as a “host community agreement” (HCA).²⁸⁷ The HCA requires payments of \$2,000 per megawatt of nameplate

276. See Bird & Clevenger, *supra* note 90.

277. See generally S.B. 516, 2019 Leg., Reg. Sess. (Md. 2019).

278. *Id.* § 7-702(b)(3).

279. *Id.*

280. *Id.* § 7-704(e)(1)(I).

281. *Id.* § 7-704(e)(1)(I)(1).

282. *Id.* § 7-704(e)(1)(I)(2–4).

283. *Id.* § 7-704(e)(1)(I)(5–6).

284. *Id.* § 7-704(e)(1)(III)(2)(C).

285. *Id.* § (e)(3)(II).

286. H.B. 5120, 102nd Leg., Reg. Sess. (Mich. 2023). As a reminder, host community agreements are CBAs between a developer and the local government entity. *Supra* note 238 and accompanying text.

287. *Id.* § 227(1).

capacity and can be used at the discretion of the host community for public safety, infrastructure, or other local needs.²⁸⁸

If a local government is uncooperative, the developer may instead enter into a CBA with community organizations.²⁸⁹ In that case, the same payment requirements that apply under the HCA still govern, but the CBA must “prioritize benefits to the community.”²⁹⁰ The statute enumerates the types of provisions that may be included in a CBA, but does not require any specific terms.²⁹¹ Illustrative provisions include workforce development, job quality standards, wages and benefits, career advancement opportunities, targeted hiring, workforce training, and funding for environmental improvements, community projects, or local organizations.²⁹²

The statute further requires that all HCAs and CBAs be legally binding, expressly stating that each agreement “inures to the benefit of the parties and their successors and assigns.”²⁹³ The MPSC is tasked with ensuring compliance with the agreement requirements, while courts retain authority to enforce the terms of the agreements themselves.²⁹⁴ Thus, Michigan’s law provides an important example of how a state can maintain flexible and customizable CBAs while also addressing some of the legal challenges identified above by imposing a baseline structural framework for all agreements.

d. California

California takes a similar approach through CAPP, which requires developers seeking approval from the CEC to enter into “one or more legally binding and enforceable agreements” with a coalition that “represent[s] community interests.”²⁹⁵ While the statute does not prescribe specific requirements for what the benefits must include, it mandates that the agreements provide “mutual benefit to the parties.”²⁹⁶ Suggested areas of focus include workplace safety, wages and benefits, worker representation in decision-making, and targeted hiring.²⁹⁷ The statute also suggests that the agreements should include funding for environmental and residential benefits, such as urban greening and pedestrian safety measures.²⁹⁸

288. *Id.*

289. *Id.* § 227(2).

290. *Id.*

291. *Id.* § 227(2)(a–d).

292. *Id.*

293. *Id.* § 227(3).

294. *Id.*

295. A.B. 205, 2021 Cal. Assemb., Reg. Sess. § 25545.10(a) (Cal. 2022) (providing examples of appropriate coalition members include labor unions, Tribes, local government, or social justice advocates).

296. *Id.*

297. *Id.*

298. *Id.* § 25545.10(b).

5. Incentivizing CBAs in New Mexico

a. Expert recommendations on the CBA process

While comprehensive data on the effectiveness of CBAs in clean energy projects are not yet available, CBAs have been used for over two decades in other development contexts. Existing research indicates that CBAs can play a significant role in channeling investment into communities and advancing labor goals.²⁹⁹ As noted above, CBAs are not perfect tools—substantial work needs to go into designing CBAs to ensure that community needs are represented, bargaining power is equalized, and contract language is enforceable.³⁰⁰ Requiring or incentivizing CBAs for projects represents an important step because it removes the burden from communities to independently initiate or negotiate such agreements.³⁰¹ Moreover, because CBAs are not new tools, there are numerous resources, checklists, and best-practice guidelines that can help craft agreements that can stand the test of time.

The Sabin Center provides several best practices for both developers and communities negotiating CBAs.³⁰² For communities, it recommends internal negotiations before formal negotiations; the use of legal counsel, mediators, and technical experts;³⁰³ as well as the collection of project information from developers, including details about other developments they have undertaken.³⁰⁴ Developers, in turn, are encouraged to utilize local outreach firms and approach negotiations as good-faith efforts to address community impacts, rather than transactional exchanges to get project approval.³⁰⁵ The Sabin Center further emphasizes relationship-building that prioritizes outreach and authenticity,³⁰⁶ and advises that CBA negotiations be coordinated with payment-in-lieu-of-tax agreements and zoning requests, with discussions about payment amounts postponed until later in the process.³⁰⁷

Legal scholars Patricia E. Salkin and Amy Lavine also provide a recommended checklist that can help communities and developers in assessing whether a CBA is appropriate and how to structure it effectively.³⁰⁸ Some notable considerations are whether a community needs assessment must be conducted prior to negotiations, whether progress monitoring should be included in

299. See, e.g., Salkin & Lavine, *supra* note 207, at 301, 304–06 (discussing metrics of success for certain CBAs in California).

300. See *id.* at 308–17 (broadly discussing projects with CBAs in New York that had multiple issues).

301. See, e.g., *id.* at 328; EISENSEN & WEBB, *supra* note 204, at 10–12.

302. EISENSEN & WEBB, *supra* note 204, at 5–12.

303. *Id.* at 9–10.

304. *Id.*

305. *Id.* at 5.

306. *Id.* at 6–7.

307. *Id.* at 8.

308. Salkin & Lavine, *supra* note 207, at 328–30.

implementation,³⁰⁹ and whether it is necessary to consider third-party beneficiary or arbitration clauses and remedies in the event of breach of contract.³¹⁰

b. Implementation of CBAs in New Mexico

If executed properly, CBAs can serve as a viable tool in New Mexico's just transition—both to increase community investment and to address broader labor needs. Local communities can, of course, organize for CBAs independently, and some developers like Pattern Energy have already entered into voluntary CBAs, including for the SunZia project, which could set a precedent for future clean energy projects. However, these voluntary actions take place against the backdrop of an urgent need to accelerate clean energy deployment to mitigate the climate crisis.³¹¹ Without structured guidance, that urgency risks repeating historical patterns in which communities—particularly low-income, rural, and Indigenous communities—bear disproportionate burdens from large-scale infrastructure buildouts.³¹² State action and statutory guidance around CBAs may be able to address some of these issues.

New Mexico can implement legislation that either incentivizes or requires CBAs for projects that require local permitting or rely on state funding, like what was implemented in Maryland or Michigan. Requiring CBAs would address a common criticism—that some communities might not have the resources to initiate and negotiate robust, enforceable agreements.³¹³ By shifting the onus on developers to engage in the CBA process, communities could focus efforts on organizing a coalition that will be engaged in the negotiation process.

If New Mexico were to adopt such legislation, it should draw from CBAs with strong and effective labor provisions to establish a baseline list of mandatory clauses. Given findings from New Mexico workforce studies emphasizing the importance of increasing diversity,³¹⁴ CBAs should include targeted and local hiring provisions that can complement CWAs or extend similar protections to projects that are not CWA-eligible. Additional clauses could prioritize workforce development through training and apprenticeship programs and local business contracting.³¹⁵

309. *Id.* at 330.

310. *Id.* at 329–31.

311. *Boosting Rapid Transition to Sustainable Energy, Top Priority as U.N. Marks First International Day of Clean Energy*, UNITED NATIONS (Jan. 26, 2024), <https://www.un.org/sustainabledevelopment/blog/2024/01/press-release-boosting-rapid-transition-to-sustainable-energy-top-priority-as-un-marks-first-international-day-of-clean-energy> [<https://perma.cc/59WF-7JQU>].

312. Grete Gansauer & Mark Haggerty, *Rural Communities Can Benefit from Infrastructure Funds—If Rollout is Done Right*, CTR. FOR AM. PROGRESS (Apr. 24, 2024), <https://www.americanprogress.org/article/rural-communities-can-benefit-from-infrastructure-funds-if-rollout-is-done-right> [<https://perma.cc/7MM8-SVWU>].

313. *See* Eisenberg, *supra* note 17, at 110.

314. N.M. DEP'T OF WORKFORCE SOLS., *supra* note 190, at 21.

315. *See id.* at 42.

Finally, New Mexico legislation should incorporate expert-informed best practices to ensure CBAs are mutually beneficial, legally valid, and enforceable through arbitration or judicial action. To promote transparency and accountability, it should also include reporting and data collection requirements like the Maryland statute. In sum, requiring CBAs in legislation for clean energy projects would provide New Mexico with a powerful mechanism to provide good jobs in the absence of unions and include community voices in the transition process.

6. *Protecting Workers Outside of the Renewable Energy Context*

This Article focused narrowly on tools other than unionization to protect workers in the renewable energy sector. While these mechanisms have become particularly prominent in legislation addressing clean energy, workers in extractive industries should not be excluded from similar protections simply because of the nature of their work. The Trump Administration's sharp turn towards "energy dominance" via fossil fuel expansion and its retreat from renewable energy underscores the need for states to step up to meet this challenge and ensure that fossil fuel employment will persist for the foreseeable future. As such, CWAs and CBAs could be used to protect workers in other contexts, including for new fossil fuel and carbon capture and sequestration (CCS) projects. In an era where fewer renewable projects are being sited, incentivizing CWA and CBAs on those projects may provide a testing ground for the types of agreements that can be developed in a green and just transition.

Moreover, advocates for environmental and climate justice should not ignore the reality that many fossil fuel workers face: dangerous working conditions in a volatile industry that, despite often offering competitive wages, still has a long way to go to offer better working terms and conditions.³¹⁶ Communities, too, should be empowered to demand more from extractive industries, as seen in Richmond, California.³¹⁷ Finally, the rise of CCS presents another emerging sector, closely tied to fossil fuel projects, in which legislation

316. MEGAN MILLIKEN BIVEN & LEO LINDNER, TRUE TRANSITION, THE FUTURE OF ENERGY & WORK IN THE UNITED STATES: THE AMERICAN OIL & GAS WORKER SURVEY 5–8 (2023), https://www.truetransition.org/_files/ugd/0ad80c_069ea867b3f044afba4dae2a1da8d737.pdf?index=true [<https://perma.cc/3RSK-22A4>] (noting the challenges faced by oil and gas workers such as job insecurity, lack of safety, and increase of 1099 independent contracting); *see also* Nancy W. Lin, Alejandra Ramirez-Cardenas, Kaitlin C. Wingate, Bradley S. King, Kenneth Scott & Kyla Hagan-Haynes, *Risk Factors for Heat-Related Illness Resulting in Death or Hospitalization in the Oil and Gas Extraction Industry*, 21 J. OCCUPATIONAL & ENV'T'L HYGIENE 58, 58–59. It is important to note that because of automation, an increase in oil and gas extraction no longer results in an increase in available jobs. *See* Rebecca F. Elliot, *Why Oil Industry Jobs are Down, Even with Production Up*, N.Y. TIMES (Jan. 21, 2025), <https://www.nytimes.com/2025/01/14/business/energy-environment/oil-gas-jobs.html> [<https://perma.cc/XJW8-FP83>].

317. *See supra* pp. 44–46.

requiring CWAs or CBAs could help ensure that new projects deliver meaningful benefits to workers and communities alike.³¹⁸

CONCLUSION

In 2019, New Mexico took its first major step towards an energy transition. Its next step should be to integrate CWAs and CBAs into the clean energy buildout to provide good jobs and opportunities for meaningful community participation. When modeled after successful examples and developed with strong community input, these tools can address pressing labor and community needs. These are not, however, the only solutions. Paid sick leave laws, minimum wage increases, and heat protection laws, plus well-funded state departments of labor and occupational health agencies, should also be considered and analyzed for the role they can play in a just transition.

Unions are old institutions that reshaped the American workforce, securing access to higher wages, better benefits, and greater job security.³¹⁹ Unions will likely always be a worker's best resource, and increasing unionization within the clean energy sector and in New Mexico must continue to be a priority. Yet unions continue to face sustained political and economic attacks. In an era when rebuilding union density will take time, supplementary mechanisms, such as CWAs, CBAs, or other pro-labor legislation, can help bridge the gap and provide immediate, tangible protections for workers.

This Article presents two options that can be employed to make the clean energy sector better for workers *and* communities. CWAs apply primarily to construction projects and can protect the workers building renewable energy facilities, but they will not apply to the workers maintaining the systems. However, the United States is still at the beginning of the clean energy infrastructure buildout, so construction jobs are ubiquitous. Thus, CWAs can likely be incredibly impactful in the early stages of the transition. CWAs can establish fair wages, benefits, and safety standards while also addressing systemic inequities within the construction industry. Moreover, by exposing

318. See LOUISE BEDSWORTH, KATHERINE HOFF & MALCOLM JOHNSON, BERKELEY L. CTR. FOR L., ENERGY, & THE ENV'T, COMMUNITY BENEFITS TOOLS AND CALIFORNIA CLEAN ENERGY PROJECTS 16 (2024), https://www.law.berkeley.edu/wp-content/uploads/2024/10/Community-Benefits-Tools-and-California-Clean-Energy-Projects_CLEE-Report_Oct24.pdf [<https://perma.cc/DYD6-5X2E>] (noting a failed 2024 California bill that explored CBAs for carbon dioxide removal facilities); see also *Carbon Capture and Storage Market Size & Share 2025 - 2034*, GLOB. MKT. INSIGHTS, <https://www.gminsights.com/industry-analysis/carbon-capture-and-storage-market> (last visited July 4, 2025) [<https://perma.cc/QHY7-FVDS>].

319. See generally ASHA BANERJEE, MARGARET POYDOCK, CELINE MCNICHOLAS, IHNA MANGUNDAYAO & ALI SAIT, ECON. POL'Y INST., UNIONS ARE NOT ONLY GOOD FOR WORKERS, THEY'RE GOOD FOR COMMUNITIES AND FOR DEMOCRACY (2021), <https://files.epi.org/uploads/236748.pdf> [<https://perma.cc/Q2Z4-9KAQ>] (broadly discussing trends where states with high union density tend to have higher rates of health insurance coverage, paid leave laws, voter protections, unemployment benefit access, and higher union density).

workers and communities to the advantages of collective bargaining, CWAs could also help revitalize unionization efforts in the state.

CBAs, in contrast, extend beyond the workforce to encompass broader community needs. The flexible nature of CBAs allows communities to craft unique agreements that can address the past harms of development, especially for low-income and communities of color. For an under-resourced state like New Mexico, CBAs can deliver direct financial investments into communities, funding that could offset declining revenues from the tax base provided by oil and gas energy infrastructure. For workers, CBAs can include safety training, local hiring provisions, prevailing wage standards, and other worker-centered measures that improve both economic security and community well-being.

Ultimately, requiring or incentivizing either CWAs or CBAs (or both) would produce the greatest impact for New Mexico's communities and clean energy future. The state can draw on the legislative models from other states, adapting them to its unique economic and social landscape. By doing so—and by continuing to support unionization efforts—New Mexico can build a clean energy sector that is safer and more prosperous for workers and communities. In the end, labor protections have always faced opposition, as efforts to protect workers are often labeled as costly and impediments to progress. However, as many organizers often say, “sometimes . . . you [have to] go slow to go fast.”³²⁰

320. Daniel Moore, *The 17-year Saga to Build the SunZia Power Line is a Cautionary Tale*, FIN. POST (Mar. 15, 2023), <https://financialpost.com/pmn/business-pmn/the-17-year-saga-to-build-the-sunzia-power-line-is-a-cautionary-tale> (quoting Phoebe Suina) [<https://perma.cc/KPU3-RPST>].

We welcome responses to this Article. If you are interested in submitting a response for our online journal, *Ecology Law Currents*, please contact cse.elq@law.berkeley.edu. Responses to articles may be viewed at our website, <http://www.ecologylawquarterly.org>.