POLICY BRIEF

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STATE LEGISLATIVE REQUIREMENTS FOR COMMUNITY BENEFITS AGREEMENTS IN RENEWABLE ENERGY PROJECTS

INITIATIVE FOR ENERGY JUSTICE

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THE INITIATIVE FOR ENERGY JUSTICE

IEJ conducts research, provides policy analysis, and facilitates dialogue to advance concrete policy pathways towards energy justice. We partner with frontline organizing groups and allies who are striving for universal access to affordable, renewable, and democratically managed energy.

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The transition to a more equitable energy system requires reimagining how communities interact with and benefit from energy infrastructure. To advance policy that centers on energy justice, communities must experience material benefits from the energy system and have decision-making authority over energy infrastructure. Benefits can include monetary payments, pollution remediation, infrastructure investment, jobs programs, and health improvements. Policy interventions that account for, track, and allocate meaningful community benefits are key to policy change.

Our community benefits research aims to provide partners with practical tools and knowledge, summarizing lessons learned from diverse community benefit approaches to inform more just and responsive energy policies.

KEY FINDINGS

As states move towards a centralized siting and permitting process for renewable energy projects, several are adopting requirements that developers enter into community benefits agreements (CBAs) with community-based organizations or local governments. This policy brief analyzes CBA and other community benefits framework requirements of six states: Michigan, California, Connecticut, Maine, Ohio, and New York in the context of the renewable energy transition. Legislative CBA requirements can potentially ensure robust, enforceable benefits packages for disadvantaged or host communities. CBA requirements do not need to be linked with a state permitting process for renewable energy projects (see Ohio's case), but it appears to be increasingly common. Legislative CBA requirements should ensure that CBAs are legally binding, enforceable, and negotiated with a coalition of organizations and stakeholders to be most effective.

I.INTRODUCTION AND POLICY CONTEXT

Community Benefits Agreements (CBAs) have been used since the 1990s in the United States. As the negative impacts of development projects like stadiums, convention centers, or airports became clear, communities began to organize to reduce or eliminate these negative impacts, which could take the form of increased rent and gentrification, job creation going to non-local workers, and increased traffic and pollution.[1]

What are Community Benefits Agreements?

CBAs are an umbrella term for many types of negotiations. They are generally understood to involve a legally binding agreement negotiated between a coalition of community-based organizations and a developer. [2]

What are Host Community Agreements (HCAs)?

HCAs are a type of CBA negotiated between a local government and a developer. Both involve mitigation requirements and monetary and non-monetary benefits for the community.[3]

What are Project Labor Agreements (PLAs)?

PLAs are a type of CBA that incorporate labor considerations into development. These may include mandating a collective bargaining agreement before a project begins or requiring union input into the terms and conditions of a project. [4]

What are Payment in Lieu of Taxes (PILOT) agreements?

PILOT agreements involve an agreement between two parties, such as a developer and a municipality or state and federal governments, to compensate the community for its loss in tax revenue due to property tax incentives or tax-exempt developments. It can be mandatory or voluntary.[5]

Developers and policymakers still commonly use CBAs in development policy, and state legislation can require them. For example, New Jersey's Economic Recovery Act of 2020 requires that a developer and the host county or municipality sign an HCA for projects costing $10 million or more. This agreement requires the creation of a community advisory committee to "oversee the implementation of the agreement, monitor successes, ensure compliance with the terms of the agreement, and produce an annual public report."[6] However, CBAs are increasingly being used to advance utility-scale renewable or clean energy infrastructure projects to reduce uncertainty in community opposition to development projects and deliver on the promise of the Justice40 Initiative to ensure that environmental justice communities benefit from the energy transition. As part of the Justice40 Initiative, the Department of Energy is requiring that applicants for Inflation Reduction Act (IRA) and Bipartisan Infrastructure Law (BIL) funding must submit a community benefits plan (CBP) as part of the application process.[7]

The Justice40 Initiative promises that forty percent of benefits from certain federal investments in energy and climate flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. It is being implemented by the Biden Administration across the whole of the federal government.[8]

2.CBA Requirements in State Legislation

This policy brief highlights state legislative approaches requiring CBAs or other community benefits policies for renewable energy projects. At least four states have enacted legislation that require a form of CBA or HCA for certain energy development projects – Michigan, California, Connecticut, and Maine. These states have built a CBA requirement into their state permitting process for renewable energy projects. This trend seems likely to continue as states face local opposition to renewable energy projects. On the other hand, Ohio enacted legislation that prevented the state from overriding local refusal of renewable energy projects, effectively removing the option for state permitting. Ohio has also required PILOT agreements for renewable energy projects permitted at the local level, thereby codifying local veto power and host community benefits. Finally, New York's policy of funding intervenor compensation programs through developer fees is an example of alternative permitting structures for renewable energy projects at the state level. These case studies are described in further detail below.

2.1 Michigan: Requiring Host Community Agreements

Michigan's HB 5120 (2023) was enacted to move forward renewable energy development projects across the state.[9] The law grants the Michigan Public Service Commission (MPSC) siting authority for utility-scale wind, solar, and energy storage facilities under certain conditions:

- When the local government that would host the facility requests the MPSC to require that a siting application be filed;
- If the local government does not have a "compatible renewable energy ordinance" (CREO), delays its decision, or denies the application;
- If the project is entirely within the borders of a city or village and the city or village is a developer, owns an electric utility that will take service from the facility, or owns the participating property.

According to the second criterion, if a local government has a CREO that aligns with the state's standards, they can retain decision-making power over renewable energy project siting, and the CBA and HCA requirements are not applicable. However, if the local government denies an application for a renewable energy project and the developer asks the MPSC to overrule the denial, if the MPSC permits the project, then that local government's CREO is no longer considered in alignment with the state's standards.

HB 5120 outlined the requirements for an MPSC permit for a renewable energy project, which included setback requirements, environmental quality analysis, minimizing light and sound nuisances, paying into an intervenor fund, decommissioning requirements, and more. In addition, an HCA is required between the applicant and the host community. The energy facility owner is required to pay $2,000 per MW of nameplate capacity to the host community, in addition to other optional benefits. If the host community refuses to negotiate the HCA, the developer may (but is not required to) enter into a CBA with one or more community-based organizations, with the total payment amount transferred equal to the $2,000 per MW HCA requirement. The Act goes into effect on November 29, 2024. A companion bill (HB 5121, 2023) amends the Michigan Zoning Enabling Act to make zoning ordinances subject to the requirements in HB 5120. A ballot initiative to repeal the law was attempted but did not gather the required number of signatures to be included in the November ballot.[10]

2.2 California: Requiring Community Agreements

California's AB 205 (2022) created various renewable energy development programs and amended some ratemaking processes at the California PUC. The policy creates a new certification process for renewable energy projects and related transmission, manufacturing, production, and assembling projects, giving developers the option to request that the California Energy Commission (CEC) certify the project instead of a local government entity. The CEC is required to forward this application to the local government hosting the project; the local agencies will review and submit comments on the application. The local agencies can request reimbursement for these review costs.

Project types subject to this policy include solar PV, land-based wind, and thermal power plants (that do not use fossil or nuclear fuels) with a generating capacity of 50 MW or more; energy storage systems of 200 MWh or more; an electric transmission line connecting these generating or storage facilities to the grid; or a facility for the manufacture, production, or assembly of these technologies with a capital investment of at least $250 million over five years.

California's policy requires that the CEC only certify a site under this policy if the applicant has entered into "one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations." According to the policy, a community-based organization could be, "workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests." There is no required amount of funding for these agreements.[11]

Four projects have opted into the CEC process: the Darden Clean Energy Project,[12] the Perkins Renewable Energy Project,[13] the Fountain Wind Project,[14] and the Compass Battery Energy Storage.[15]

The Perkins Renewable Energy Project submitted an application in 2024 with three negotiated and executed CBAs that were kept confidential, with a Community Benefits Agreement Narrative that indicated $1.5 million over ten years would be transferred to various organizations. The CEC determined that the three negotiated and executed CBAs submitted by Perkins did not meet the state's requirements as being binding and enforceable, as they contained a clause "permitting the applicant to cancel the agreement at any time upon written notice to the recipient of the funds." The application process is still ongoing as of July 23, 2024.[16] The Fountain Wind Project's CBA approval has been less smooth. Fountain Wind submitted a community benefits plan to the CEC that involved donating money to a foundation that could then give out grants to community organizations; Shasta County, the host county, then argued that the foundation was not in talks with the developer and that the community benefits were not materializing. The developer eventually entered into an agreement with a trades council for $175,000 for "workforce training and development purposes," which the CEC certified as a CBA meeting legislative requirements, rejecting the county's argument that a trades council is not a community-based organization.[17] These case studies show the possible downsides of developers being able to pick and choose which organizations they negotiate CBAs with.

2.3 Connecticut: Community Benefits and Workforce Developments

Connecticut's SB 999 (2021), also known as the Climate and Community Investment Act or the CCIA, required that renewable energy developers take "all reasonable actions to ensure that a community benefits agreement is entered into with appropriate community organizations" and "take all appropriate actions to ensure a workforce development plan" for certain renewable energy projects.[18]

- **Projects subject to the CBA requirement include all renewable energy projects as defined in the Connecticut General Statute,[19] but excluding offshore wind, and must have commenced construction after July 1, 2021, and had a total nameplate capacity of 5 MW or more.**
- **Projects subject to the workforce development plan requirement must have commenced construction after July 1, 2021, with a total nameplate capacity of 2 MW or more.**

In addition, any project that was (1) approved by the Connecticut Public Utilities Regulatory Authority (CPURA) after January 1, 2022, and (2) was selected by a competitive solicitation from the Connecticut Department of Energy and Environmental Protection (CDEEP) or an electric distribution company are not subject to either CBA or workforce development plan requirements.[20] The two electric distribution companies in Connecticut are Eversource and United Illuminating. Projects selected through competitive solicitation from the CDEEP or an electric distribution company after January 1, 2022, and meeting the capacity requirements would be subject to the CBA and workforce requirements.

The CCIA was enacted as part of a campaign by the Connecticut Roundtable on Climate & Jobs, a coalition of labor, religious, environmental, and community leaders focused on climate and economic justice issues.[21] The Roundtable on Climate & Jobs frames the enactment of SB 999 as bringing labor standards for renewable energy jobs up to the standard of neighboring states, such as New York and New Jersey,[22] and up to the standard that already existed in Connecticut for offshore wind projects.[23]

While CPURA dockets show that there have been eligible renewable energy projects over 5 MW that have been selected through competitive solicitation from the CDEEP or an electric distribution company after January 1, 2022,[24] the CDEEP does not require confirmation of a CBA or workforce development plan; developers are required to affirm that they are aware of, and in compliance with, the requirements of SB 999.[25]

2.4 Maine: Community Benefits Packages in Wind Permits

Maine SP 582 (2010) required that expedited wind energy developments applying for a state permit be accompanied by a community benefits package that accompanies the permit application.[26] The community benefits package must be valued at at least $4,000 per year per wind turbine, averaged over a twenty-year period. This requirement is waived for projects less than 20 MW, projects owned by a nonprofit, public, or quasi-public entity, and projects where the host community has voted to waive or reduce the community benefits package requirement. In addition, any expedited wind energy development project located on Passamaquoddy Indian territory, Penobscot Indian territory, or Qualifying Band Trust Land is exempted from the community benefits package requirements unless the Passamaquoddy Tribe, the Penobscot Nation, or the Aroostook Band of Micmacs (respectively) chooses to be considered a host community. Prior to this legislation, Maine had an existing requirement that expedited wind energy developments had to provide "significant tangible benefits" outside of the presumed energy and emission-related benefits.[27]

Tangible benefits are defined as environmental or economic improvements or benefits attributable to the expedited wind energy development project and can include property tax payments or other payments to a host community, jobs, local purchase of materials, reduced property taxes, reduced electrical rates, resource conservation, among other comparable benefits.[28]

Community benefits packages are defined in the legislation as the aggregate collection of tangible benefits resulting from payments to the host community or communities or payments from CBAs (but excluding property tax payments), payments to reduce energy costs in the host community, and any donations for land or natural resource conservation.[29]

The Governor's Office of Energy Independence and Security is required to report on tangible benefits provided by expedited wind energy developments, including community benefits packages and CBA payments. These reports are not released in a consistent format but are often made available as part of a company's permit application online.[30]

2.5 Ohio: Codifying Local Veto Power

While most states are moving toward centralized permitting processes, Ohio has taken a different approach. Ohio created an alternative taxation structure for renewable energy projects with SB 232 (2010), where if the local county commission approves, the renewable energy developer is required to enter a Payment in Lieu of Taxes (PILOT) agreement with the county. Solar project developers were required to pay the host county $7,000 per MW of nameplate capacity and maintain Ohio-based workforce requirements (eighty percent Ohio-domiciled). All other renewable energy projects have required payments of between $6,000 and $9,000 per MW of nameplate capacity, based on Ohio-based employment for construction and installation.[31]

The Ohio Power Siting Board (OPSB) regulates the development of all energy generation facilities over 50 MW. The OPSB also regulates wind energy projects over 5 MW.[32] In 2021, SB 52 codified local control over renewable energy siting projects, allowing a local board of county commissioners to adopt a resolution within 90 days of a public meeting prohibiting large wind and solar facility construction or limiting wind and solar project boundaries. SB 52 also authorizes these commissioners to designate all or part of an unincorporated area of a county as restricted from wind and solar facility development.[33] SB 52 effectively solidified an Ohio county's veto power on renewable energy while maintaining PILOT agreement requirements for approved projects.

2.6 New York: Intervenor Funds

The Power New York Act (2011) created a state-level siting requirement for any electricity-generating facility over 25 MW.[34] In the Accelerated Renewable Energy Growth and Community Benefit Act (2020), the Office of Renewable Energy Siting (ORES) was created, and permitting for renewable projects over 25 MW was streamlined under the ORES.[35] Developers can seek ORES certification for projects between 20 and 25 MW. For projects permitted through the ORES in New York, developers are required to contribute $1,000 per MW of capacity into an account for intervenor funds. Of this fund, seventy-five percent is allocated to local agency use, and twenty-five percent is available to other groups to participate in the permitting and siting process.[36] New York's intervenor fund is similar to the requirement in Michigan's HB 5120 (2023). It is an example of the state requiring less substantive community benefits to be provided by the developer–funding to participate in a regulatory process.

3.Findings and Conclusion

The increased use of community benefits frameworks (such as Ohio's PILOT payment requirement, New York's intervenor compensation fees, and Maine's community benefits packages) or CBA requirements (such as Michigan, California, and Connecticut's legislation requiring legally enforceable agreements) in renewable energy projects is growing across the United States. This trend occurs in the context of federal Department of Energy CBP requirements for energy infrastructure projects and has led to renewed local efforts to negotiate CBAs, HCAs, PLAs, and other benefits for communities from developers.

State-level CBA requirements tend to be interwoven with changes in how renewable energy projects are permitted across the United States. Most states have contingent principal authority over renewable energy siting and permitting based on the project size; twelve states give local government principal jurisdiction over renewable energy siting and permitting (Alabama, Delaware, Georgia, Hawaii, Illinois, Kentucky, Indiana, Missouri, Montana, Pennsylvania, Texas, and Utah).[37] Across the United States, twenty-five percent of all counties have restrictions in place targeting renewable energy – these are generally technical restrictions on setback requirements, capacity limits, sound restrictions, etc.[38] Other research has explored in more detail the state permitting and siting process for renewable energy projects, finding certain states with established processes (such as New York, Ohio, Minnesota, and Wisconsin) and other states just beginning to put their processes into effect (including California, Colorado, Washington, and Michigan).[39] As states work to achieve greenhouse gas emission reduction goals, such as 100% Renewable Energy Portfolio Standards, these state permitting and siting processes are key areas for energy justice intervention to ensure that community benefits and governance are not sidelined in the transition.[40]

Requiring CBAs or other community benefits frameworks may lead to an increased number of durable, enforceable CBAs associated with renewable energy projects in these states. CBAs, strong labor agreements, workforce development programs, and HCAs can result in benefits such as reducing and remediating pollution and increasing democratic ownership of energy infrastructure. Institutionalizing CBA requirements has the potential to create a more stable development context for renewable energy projects, which could speed up the adoption of renewable energy in the United States.

However, evaluation of these policies may also show potential downsides to institutionalizing CBA requirements in state legislation, such as the case in California discussed in this policy brief. In certain cases, CBA requirements do not meet the standard definition of a CBA, which is generally negotiated between a coalition of community-based organizations and a developer; some states only require that a developer enter into an agreement with a single organization. If CBAs do not have these key attributes, public support for these mechanisms may not lead to the level of support that legislators intend to create with CBA requirements. More research evaluating these policies is necessary to see how they can be improved and how communities engage with the state permitting process when a CBA is required.

ENDNOTES

1. Gross, "Community Benefits Agreements"; Wolf-Powers, "Community Benefits Agreements and Local Government"; Salkin and Lavine, "Understanding Community Benefits Agreements."
2. Gross, "Community Benefits Agreements"; Salkin and Lavine, "Understanding Community Benefits Agreements."
3. Sotolongo, "Community Benefits Policy and Energy Justice."
4. Glass and Walter, "How Project Labor Agreements and Community Workforce Agreements Are Good for the Biden Administration's Investment Agenda"; Emerald Cities Collaborative, "Anatomy of an Effective Community Workforce Agreement."
5. Kenyon and Langley, "Payments in Lieu of Taxes By Nonprofits: Case Studies."
6. New Jersey Economic Recovery Act, 2020
7. U.S. Department of Energy, "About Community Benefits Plans."
8. The White House, "Justice40: A Whole-Of-Government Initiative."
9. H.B. 5120, XXX leg., Y Sess. (Mi. 2023) (enacted in Mich. Comp. Laws § 460.1227)
10. King, "Initiative to Repeal Renewable Energy Siting Reform Fails to Get on November Ballot."
11. King, "Initiative to Repeal Renewable Energy Siting Reform Fails to Get on November Ballot."
12. The Darden Clean Energy Project consists of a 1,150 MW solar PV facility, an up to 4,600 MWh battery energy storage system, an up to 1,150 MW green hydrogen generator, and associated infrastructure (see California Energy Commission, "Darden Clean Energy Project").
13. The Perkins Renewable Energy Project consists of a 1,150 MW solar PV facility and a battery energy storage facility (see California Energy Commission, "Perkins Renewable Energy Project").
14. The Fountain Wind Project consists of an up to 205 MW land-based wind facility and associated infrastructure (see California Energy Commission, "Fountain Wind Project").
15. The Compass Battery Energy Storage Project consists of an approximately 250 MW battery energy storage system and associated infrastructure (see California Energy Commission, "Compass Energy Storage Project").
16. California Energy Commission, *Docket 24-OPT-01*.
17. California Energy Commission, *Docket 23-OPT-01*.
18. S.B. 999, 2021 Leg., Jan. Sess. (Conn. 2021) (enacted in Conn. Gen. Stat. § 31-53d).
19. Renewable energy projects include solar, wind, fuel cells, geothermal, biogas, thermal, ocean thermal, wave or tidal, hydropower, and other low emissions-advanced renewable energy conversion technologies. See Conn. Gen. Stat. § 16-1.
20. S.B. 999, 2021 Leg., Jan. Sess. (Conn. 2021) (enacted in Conn. Gen. Stat. § 31-53d).
21. CT Roundtable on Climate & Jobs, "Senate Bill 999: The Climate and Community Investment Act."
22. New York (SB S2506C, 2021, https://www.nysenate.gov/legislation/bills/2021/S2506); NJ (2019 Energy Master Plan: Pathway to 2050, 2020. https://www.nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf
23. H.B. 7156, 2019 Leg., Jan. Sess. (Conn. 2019) (enacted in Conn. Gen. Stat. § 16a-3n).
24. Connecticut Public Utilities Regulatory Authority, *Docket 24-08-03*; Connecticut Public Utilities Regulatory Authority, *Docket 24-08-04*.
25. Bureau of Energy and Technology Policy, Connecticut Department of Energy & Environmental Protection, email message.
26. S.P. 582, 124th Leg., 2nd Reg. Sess. (Me. 2010) (enacted in Me. Gen. Code § 35-A-3451).
27. Me. Gen. Code § 3401-3459; Me. Gen. Code § 481-489-E.
28. SP 582, 124th Leg., 2nd Reg. Sess. (Me. 2010) (enacted in Me. Gen. Code § 3451-10).
29. SP 582, 124th Leg., 2nd Reg. Sess. (Me. 2010) (enacted in Me. Gen. Code § 3451-1-C).
30. Maine Department of Environmental Protection, "Downeast Wind, LLC"; Maine Governor's Office of Energy Independence and Security, "Tracking Progress Toward Meeting Maine's Energy Independence Goals, 2011"; Maine Governor's Office of Energy Independence and Security, "Maine Wind Energy Development Assessment, 2012."
31. S.B. 232, 128th Leg. (Ohio, 2010) (enacted in Ohio Rev. Code § 5727.75).
32. See Ohio Rev. Code § 4906.
33. S.B. 52, 134th Leg. (Ohio, 2021) (enacted in Ohio Rev. Code § 303.58).
34. A. 8501, 2011 Leg. (N.Y., 2011) (enacted in N.Y. P.B.S. § 160).
35. A. 9508B, 2020 Leg. (N.Y., 2020) (enacted in N.Y. P.B.S. § 137).
36. A. 9508B, 2020 Leg. (N.Y., 2020) (enacted in N.Y. P.B.S. § 148).
37. Enterline and Valainis, "Laws in Order: An Inventory of State Renewable Energy Siting Policies."
38. Holm and Goodwin, "Communities Left Behind."
39. Beshouri et al., "Power in Partnership: Insights for Siting Utility-Scale Renewables in Michigan.
40. Initiative for Energy Justice, "Justice in 100: Analysis of the First Ten 100% Laws in the U.S."; Sotolongo, "Community Benefits Policy and Energy Justice."

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