II

117TH CONGRESS
2D SESSION

S. 4013

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

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2022

Mr. SANDERS (for himself, Mr. PADILLA, Mr. BOOKER, Ms. WARREN, Mr. MARKEY, Mr. MURPHY, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Energy Security and Independence Act of 2022’’.

SEC. 2. DEFINITIONS.

In this Act:

(1) COVERED ENERGY-EFFICIENCY OR RENEWABLE ENERGY SYSTEM OR TECHNOLOGY.—The term

''covered energy-efficiency or renewable energy system or technology'' means—

(A) a renewable energy generation system;

(B) a renewable energy storage system;

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

(D) an energy-efficiency technology;

(E) an electric transportation system;

(F) a renewable energy technology; and

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

(2) DIRECT LOAN.—

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

(B) INCLUSION.—The term ''direct loan'' includes the purchase of, or participation in—

(i) a loan made by another lender; or

(ii) a financing arrangement that defers payment for more than 90 days, including the sale of a Government asset on credit terms.

(3) ELIGIBLE ENTITY.—The term ''eligible entity'' means a private entity, including a manufacturer, or a partnership of private entities.

(4) ENVIRONMENTAL JUSTICE COMMUNITY.—The term ''environmental justice community'' means a community with significant representation of 1 or more communities of color, low-income communities, or Tribal or indigenous communities that experience, or are at risk of experiencing, higher or more adverse human health or environmental effects as compared to other communities.

(5) HEAT PUMP.—The term ''heat pump'' means a device that—

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

(B) is used to maintain a safe, comfortable, and affordable temperature in a building.

(6) PUBLIC HEAT PUMP.—The term ''public heat pump'' means a heat pump that is owned or operated by—

(A) a unit of Federal, State, or local government; or

(B) a cooperatively owned utility.

(7) RENEWABLE ENERGY.—The term ''renewable energy'' means energy generated from a renewable energy source.

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

SEC. 3. FINDING.

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

(1) to have a viable domestic manufacturing supply chain for components of covered energy-efficiency and renewable energy systems and technologies; and

(2) to reduce the reliance of United States manufacturers on components of covered energy-efficiency and renewable energy systems and technologies made in foreign countries.

SEC. 4. USE OF DEFENSE PRODUCTION ACT OF 1950 AUTHORITIES TO SUPPORT DOMESTIC INDUSTRIAL BASE AND MANUFACTURING CAPABILITIES FOR RENEWABLE ENERGY TECHNOLOGIES.

(a) RENEWABLE ENERGY TECHNOLOGIES AS STRATEGIC AND CRITICAL MATERIALS.—Section 106 of the

Defense Production Act of 1950 (50 U.S.C. 4516) is amended—

(1) by inserting ''(a)'' before ''For purposes''; and

(2) by adding at the end the following:

''(b) The designation of energy as a strategic and critical material under subsection (a) includes the designation of covered energy-efficiency and renewable energy systems and technologies (as defined in section 2 of the Energy Security and Independence Act of 2022) as strategic and critical materials.''.

(b) APPROPRIATION.—

(1) IN GENERAL.—In addition to amounts otherwise available, there is appropriated for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $100,000,000,000 to the President to carry out subsection (c).

(2) AVAILABILITY OF AMOUNTS.—Amounts appropriated under paragraph (1) shall remain available until September 30, 2032.

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

(1) IN GENERAL.—The President shall use the authorities under titles I and III and section 708(c) of the Defense Production Act of 1950 (50 U.S.C.

4501 et seq.) to establish, maintain, protect, or restore the domestic industrial base and manufacturing capabilities for covered energy-efficiency and renewable energy systems and technologies, including by providing loan guarantees, loans, purchase agreements, and grants to manufacturing entities to expand the domestic productive capacity of those entities and repurpose equipment to meet the manufacturing demands of such systems and technologies.

(2) REQUIREMENTS.—In carrying out paragraph (1), the President shall—

(A) identify the domestic industrial base needs to transform the United States domestic energy system into a 100-percent renewable energy system;

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

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

(ii) to allocate the strategic and critical materials described in section 106(b) of that Act, as added by subsection (a), in a manner that prioritizes—

(I) environmental justice communities first;

(II) publicly owned systems of renewable energy;

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

(IV) Federal agencies whose buildings can be used as public sources of solar energy for environmental justice communities; and

(C) take the actions described in subparagraph (B) in tandem with existing financial and technical assistance programs of the Department of Energy, the Department of Transportation, and such other agencies as the President considers appropriate; and

(D) coordinate with the task force established under section 5.

SEC. 5. DOMESTIC RENEWABLE ENERGY INDUSTRIAL BASE TASK FORCE.

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

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

(A) equitable energy; and

(B) energy democracy and transportation design;

(2) environmental justice community leaders;

(3) labor unions;

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

(5) staff of the National Laboratories (as defined in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801)); and

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

(b) DUTIES.—The task force established under subsection (a) shall develop a manufacturing and allocation plan—

(1) to establish, maintain, protect, and restore a domestic industrial base and manufacturing capabilities for covered energy-efficiency and renewable energy systems and technologies;

(2) to reach the goal of a 100 percent renewable energy system as soon as possible, using the best available science and technologies;

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

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

(5) to ensure that the domestic industrial base of covered energy-efficiency and renewable energy systems and technologies creates and maintains high-quality jobs that are represented by labor organizations.

(c) APPROPRIATIONS.—In addition to amounts otherwise available, there is appropriated, out of any money in the Treasury not otherwise appropriated, $25,000,000 to the President to carry out this section for fiscal year 2022, to remain available until September 30, 2031.

SEC. 6. RENEWABLE ENERGY GENERATION SYSTEM COMPONENT MANUFACTURING SUPPLY CHAIN ASSISTANCE.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Energy (referred to in this section as the ''Secretary'') shall establish a program (referred to in this section as the ''program'') to provide financial assistance, including grants, direct loans, and loan guarantees, to eligible entities to carry out projects—

(1) to construct new facilities that manufacture components of covered energy-efficiency and renewable energy systems and technologies; and

(2) to retool, retrofit, or expand existing facilities that manufacture, or have the ability to manufacture, components of covered energy-efficiency and renewable energy systems and technologies.

(b) APPLICATION.—To be eligible to receive financial assistance under the program, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

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

(1) have the potential to benefit an environmental justice community, including by reducing the pollution and emissions within, and the utility costs of, such a community;

(2) are strategically located near manufacturers of components of covered energy-efficiency and re-

newable energy systems and technologies to create a geographic concentration of those manufacturers in the manufacturing supply chain;

(3) have potential to directly and indirectly create domestic jobs, including jobs for low-income communities, dislocated workers, and workers from groups that are underrepresented in the manufacturing industry, including formerly incarcerated workers;

(4) will result in economic development or economic diversification in economically distressed regions or localities; and

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

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

(1) bear interest at a rate that does not exceed a level that the Secretary determines to be appropriate; and

(2) be subject to such other terms and conditions as the Secretary determines to be appropriate.

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

(f) Conditions of Receipt of Financial Assistance.—

(1) Required agreement.—An eligible entity awarded financial assistance under the program shall enter into an agreement that specifies that, during the 5-year period immediately following the award of the financial assistance—

(A) the eligible entity will not—

(i) repurchase an equity security of the eligible entity or any parent company of the eligible entity that is listed on a national securities exchange, except to the extent required under a contractual obligation that is in effect as of the date of enactment of this Act;

(ii) outsource or offshore jobs to a location outside of the United States; or

(iii) abrogate existing collective bargaining agreements; and

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

(2) Financial protection of government.—

(A) In general.—Financial assistance may not be awarded under the program to an eligible entity unless—

(i)(I) the eligible entity has issued securities that are traded on a national securities exchange; and

(II) the Secretary of the Treasury receives a warrant or equity interest in the eligible entity; or

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

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

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

(B) Terms and conditions.—The terms and conditions of any warrant, equity interest, or senior debt instrument received under subparagraph (A)(ii) shall be set by the Secretary and shall meet the following requirements:

(i) Purposes.—Such terms and conditions shall be designed to provide for reasonable participation by the Secretary, for the benefit of taxpayers, in—

(I) equity appreciation in the case of a warrant or other equity interest; or

(II) a reasonable interest rate premium, in the case of a debt instrument.

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

(I) IN GENERAL.—For the primary benefit of taxpayers, the Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this paragraph.

(II) NO VOTING.—The Secretary shall not exercise voting power with respect to any shares of common stock acquired under this paragraph.

(iii) SUFFICIENCY.—If the Secretary determines that an eligible entity cannot feasibly issue warrants or other equity interests as required by this paragraph, the Secretary may accept a senior debt instrument in an amount and on such terms as the Secretary determines appropriate.

(g) FREE, PRIOR, AND INFORMED CONSENT FOR INDIGENOUS COMMUNITIES IN THE SITING PROCESS.—The Secretary shall establish standards and procedural requirements to secure free, prior, and informed consent of Indian Tribes to the siting of projects carried out with financial assistance under the program that affect Indian land, water, livelihoods, and culture, including off-reservation treaty-reserved rights to hunting, fishing, gathering, and protection of, and access to, sacred sites.

(h) PROHIBITION.—In carrying out the program, the Secretary may not provide financial assistance for projects that will source components of covered energy-efficiency and renewable energy systems and technologies from, or supply components of covered energy-efficiency and renewable energy systems and technologies to, entities that use forced labor (as defined in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)).

(i) STUDY AND REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall conduct, and submit to Congress a report describing the results of, a study on—

(1) opportunities to convert fossil fuel infrastructure into renewable energy infrastructure;

(2) gaps in the current United States manufacturing supply chains for covered energy-efficiency and renewable energy systems and technologies; and

(3) benefits to the energy security of the United States of onshoring supply chains for covered energy-efficiency and renewable energy systems and technologies.

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

SEC. 7. WEATHERIZATION ASSISTANCE PROGRAM.

Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended—

(1) by striking the section designation and heading and all that follows through ''For the'' and inserting the following:

''SEC. 422. APPROPRIATIONS.

''For the''; and

(2) in the matter preceding paragraph (1), by striking ''are authorized to be appropriated—'' and all that follows through the period at the end of paragraph (2) and inserting ''is appropriated, out of any funds in the Treasury not otherwise appro-

priated, $3,000,000,000 for each of fiscal years 2023 through 2032.''.

SEC. 8. PUBLIC HEAT PUMPS.

In addition to amounts otherwise available, there is appropriated for fiscal year 2022, out of any funds in the Treasury not otherwise appropriated, $10,000,000,000 to the Secretary of Energy, acting through the Office of Energy Efficiency and Renewable Energy, to procure and install public heat pumps, to remain available until September 30, 2032.

SEC. 9. MINIMUM LABOR STANDARDS.

(a) DEFINITIONS.—In this section:

(1) COVERED ENTITY.—The term ''covered entity'' means an entity that directly or indirectly receives funds or assistance under a covered energy program, without regard to the form, amount, or type of Federal assistance provided.

(2) COVERED ENERGY PROGRAM.—The term ''covered energy program'' means—

(A) a program authorized under this Act; or

(B) the Weatherization Assistance Program for Low-Income Persons established under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.).

(3) PROJECT LABOR AGREEMENT.—The term ‘‘project labor agreement’’ means a pre-hire collective bargaining agreement with one or more labor organizations that—

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

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

(b) LABOR STANDARD REQUIREMENTS.—Notwithstanding any other provision of law, a covered entity shall comply with the labor standards under this section.

(c) PREVAILING WAGES.—A covered entity shall ensure the following:

(1) LABORERS AND MECHANICS.—Any laborer or mechanic employed by the covered entity, or any contractor or subcontractor in the performance of work funded or assisted, in whole or in part, under a covered energy program, shall be paid wages at rates not less than those prevailing on work of a similar character in the locality, as determined by the Secretary of Labor under subchapter IV of chap-

ter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act''). With respect to the labor standards in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

(2) OTHER WORKERS.—All individuals employed by the covered entity, or any contractor or subcontractor using funds or other assistance provided under a covered energy program, in the manufacture or furnishing of materials, supplies, articles, or equipment shall be paid wages at rates not less than employees performing similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished, as determined by the Secretary of Labor in accordance with sections 6501 through 6511 of title 41, United States Code (commonly known as the ''Public Contracts Act'').

(d) LABOR-MANAGEMENT COOPERATION.—

(1) DEFINITIONS.—In this subsection:

(A) NLRA DEFINITIONS.—The terms ''employee'', ''employer'', and ''labor organization" have the meanings given the terms in section 2 of the National Labor Relations Act (29 U.S.C. 152).

(B) BOARD.—The term "Board" means the National Labor Relations Board.

(2) IN GENERAL.—Notwithstanding any contrary provision of law, including the National Labor Relations Act (29 U.S.C. 151 et seq.), paragraphs (3) through (8) shall apply with respect to any covered entity that is an employer and any labor organization who represents or seeks to represent employees of such covered entity.

(3) LABOR PEACE.—Any employer that is a covered entity shall recognize for purposes of collective bargaining a labor organization that demonstrates that a majority of the employees in a unit appropriate for bargaining who perform or will perform work funded or assisted, in whole or in part, by a covered energy program have signed valid authorizations designating the labor organization as their bargaining representative and that no other labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit pursuant to the National Labor Relations Act (29 U.S.C. 151 et seq.). Upon such show-

ing of majority status, the employer shall notify the labor organization and the Board that the employer has determined that the labor organization represents a majority of the employees and that the employer is recognizing the labor organization as the exclusive representative of the employees for the purposes of collective bargaining pursuant to section 9 of such Act (29 U.S.C. 159).

(4) CERTIFICATION.—Should a dispute over majority status or the appropriateness of the unit arise between the employer and the labor organization, either party may request that the Board investigate and resolve the dispute. If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations designating the labor organization as their bargaining representative and that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the unit, the Board shall not direct an election but shall certify the labor organization as the representative described in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)).

(5) COMMENCEMENT OF BARGAINING.—Not later than 10 days after receiving a written request

for collective bargaining from a recognized or certified labor organization, or within such period as the parties agree upon, the labor organization and employer shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

(6) MEDIATION.—If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(7) ARBITRATION.—If after the expiration of the 30-day period beginning on the date on which the request for mediation is made under paragraph (6), or such additional period as the parties may agree upon, the Federal Mediation and Conciliation Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to

a tripartite arbitration panel established in accordance with such regulations as may be prescribed by the Service, with one member selected by the labor organization, one member selected by the employer, and one neutral member mutually agreed to by the parties. The labor organization and employer must each select the members of the tripartite arbitration panel within 14 days of the Service's referral; if the labor organization or employer fail to do so, the Service shall designate any members not selected by the labor organization or the employer. A majority of the tripartite arbitration panel shall render a decision settling the dispute as soon as practicable and not later than within 120 days of the selection of all members of the panel, absent extraordinary circumstances or by agreement or permission of the parties, and such decision shall be binding upon the parties for a period of 2 years, unless amended during such period by written consent of the parties. Such decision shall be based on—

(A) the employer's financial status and prospects;

(B) the size and type of the employer's operations and business;

(C) the employees' cost of living;

(D) the employees' ability to sustain themselves, their families, and their dependents on the wages and benefits they earn from the employer; and

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

(8) CONTRACTORS AND SUBCONTRACTORS.—Any employer that is a covered entity shall require any contractor or subcontractor whose employees perform or will perform work funded or assisted, in whole or in part, by a covered energy program to comply with the requirements set forth in paragraphs (2) through (7).

(e) PROJECT LABOR AGREEMENT.—A covered entity performing any construction project funded or assisted, in whole or in part, by a covered energy program shall be a party to, or, as applicable, require contractors and subcontractors in the performance of such project to be a party to, a project labor agreement.

(f) LIMITS ON BACKGROUND CHECKS.—A covered entity, and each contractor and subcontractor in the performance of any work funded or assisted, in whole or in part, by a covered energy program, shall not request or otherwise consider the criminal history of an applicant for employment before extending a conditional offer to the applicant, unless—

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

(2) the position is for a Federal law enforcement officer (as defined in section 115(c) of title 18, United States Code) position; or

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

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

(1) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of the service and in fact;

(2) the service is performed outside the usual course of the business of the covered entity, contractor, or subcontractor, respectively; and

(3) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in such service.

SEC. 10. EQUITABLE ALLOCATION OF FUNDS.

The President and the Secretary of Energy shall each ensure that of the total amount of Federal support and assistance provided under this Act by the President and the Secretary of Energy, respectively, not less than 40 percent shall be invested in environmental justice communities.

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