



Labor-Related Items in Reconciliation Bill

On November 19, 2021, the House of Representatives approved a pared-down version of the reconciliation bill, the Build Back Better Act, by a vote of [220-213](#). One Democrat joined all Republicans in opposition.

This House-passed version eliminates a union neutrality provision tied to grants supporting the Direct Care industry. That is in addition to the number of labor-related provisions that had been eliminated in the late-October version of the Build Back Better Act: provisions borrowed from the Protecting the Right to Organize (PRO) Act such as creating penalties for employer meetings on unionization and misclassification of employees, and an earmark for tax dollars to create an electronic voting system for the National Labor Relations Board. Other provisions of the PRO Act such as new financial penalties under the National Labor Relations Act and personal liability for officers and directors of business are still included.

The House Democrats did bring back a provision from the original draft of the legislation to provide an above-the-line tax deduction for union member dues. Retained in the bill text are, a series of prevailing wage requirements for clean energy programs, tax breaks for union-made electric vehicles, and union bonuses for home efficiency projects and advanced manufacturing.

This legislative language is likely to see additional substantive changes in the Senate. [Click here to read the bill text.](#)

Labor Provisions Inside the Build Back Better Act reconciliation bill as of November 19, 2021:

1. Financial Penalties on Employers under the NLRA (SEC. 21006)

The reconciliation bill would allow the National Labor Relations Board (NLRB) to assess civil financial penalties on employers – up to \$50,000 for each violation and up to \$100,000 for repeat violations – if the Board determines an employer committed an unfair labor practice.

2. Financial Penalties under NLRA – Director and Officer Liability (SEC. 21006)

The NLRB could also decide to assess the new civil penalties created in this bill against a director or officer of the employer if the board determines that a director or officer “directed or committed the violation, had established a policy that led to such a violation, or had actual or constructive knowledge of and the authority to prevent the violation and failed to prevent the violation.” (p. 110)

3. Increased Funding for Department of Labor (SEC. 21001)

To reach the reported \$3.5 trillion price tag of the reconciliation bill, nearly \$2 billion in new funding would be given to the Department of Labor, divided between the agencies below. An increase of \$405 million for the Wage and Hour Division, available for its use to “carry out activities” until

September 30, 2026, could be assumed as part of the Biden Administration's effort to limit independent contracting and the gig economy.

- \$195 million for EBSA
- \$707 million for OSHA
- \$133 million for MSHA
- \$405 million for Wage and Hour Division
- \$121 million for Office of Workers' Compensation Programs
- \$201 million for OFCCP
- \$176 million for DOL's Office of Solicitor

4. Union-made Electric Vehicle Tax Rebate (SEC. 136401)

Electric vehicles assembled at a union factory would be eligible for a \$4,500 tax rebate at sale. "The goal of the incentive is not just to give more money to unionized worksites. It's also to provide a carrot to those nonunion auto companies so they will let unions come in and organize their workforce. The stick, meanwhile, comes if they do not comply: Their cars would effectively be \$4,500 more expensive than those made at a union facility. The provisions will force nonunion companies to choose between protecting their employees from union coercion or being at a competitive disadvantage." (Vernuccio editorial in the [Detroit News](#))

5. Union Bonus for "High Efficiency Electric Home Rebate Program" (SEC. 30412)

Union contractors performing home improvement projects eligible for the new "High Efficiency Electric Home Rebate Program" would receive a project bonus of \$250 above non-union contractors performing similar work. To qualify, the contractor must allow collective bargaining agreements and follow prevailing wage requirements.

6. Union Wage Requirements for Clean Energy Programs

Thirteen programs in the bill include a prevailing wage requirement for specific classes of employees, meaning all laborers and mechanics employed by contractors on projects under these programs shall be paid prevailing wages as compared to similar projects in the area. Prevailing wage requirements raise project costs because they peg the wages for specific occupations to the union rate in the area (rather than the average wage), impose burdensome paperwork on employers, and stifle competition.

- High Efficiency Electric Home Rebate Program **(SEC. 30412)**
- Extension and Modification of Credit for Electricity Produced from Certain Renewable Resources **(SEC. 136101)**
- Investment Credit for Electric Transmission Property **(SEC. 136105)**
- Extension and Modification of Credit for Carbon Oxide Sequestration **(SEC. 136106)**
- Zero-Emission Nuclear Power Production Credit **(SEC. 136108)**
- Clean Hydrogen **(SEC. 136204)**
- Energy Efficient Commercial Buildings Deduction **(SEC. 136303)**
- Extension, Increase, and Modifications of New Energy Efficient Home Credit **(SEC. 136304)**
- Alternate Fuel Refueling Property Credit **(SEC. 136405)**
- Extension of the Advanced Energy Project Credit **(SEC. 136501)**
- Labor Costs of Installing Mechanical Insulation Property **(SEC. 136502)**
- Clean Electricity Investment Credit **(SEC. 136802)**
- Clean Fuel Production Credit **(SEC. 136805)**

7. Union Bonus for Advanced Manufacturing Production Tax Credit (SEC. 136504)

A special tax credit is provided for the manufacturing of components necessary for wind and solar power production. Unionized manufacturing facilities would receive an additional 10% bonus to this advanced manufacturing production tax credit solely for being a union shop.

8. Tax break for funding union political campaigns (SEC. 138514)

The bill provides a \$250 above-the-line tax deduction for workers who pay full union dues, including the portion of dues that funds union political activities and lobbying. However, unionized workers who pay agency fees—which do not support political activities—cannot take the deduction. This deduction indirectly subsidizes union political campaigns. ([I4AW Report by James Sherk](#))

Provisions Removed From the Original Bill:

- **NLRB Electronic Voting (p. 115)**
NLRB would receive \$350 million in additional funding, available until September 30, 2026. \$5 million of that funding "shall be for the implementation of systems to conduct electronic voting for union representation elections."
- The new penalties tied to the new prohibitions could create divisions in the workplace, hamstring job creators, and punish those seeking independent work. During a markup of this legislation at the House Committee on Education and Labor, Rep. Burgess Owens (R-UT) offered an amendment to level the playing field by also making labor unions liable for civil financial penalties. Rep. Andy Levin (D-MI) called the Owens amendment "exceedingly harmful" and the amendment failed 21-28 on a party-line vote as part of an en bloc amendment. Rep. Diana Harshbarger (R-TN) offered an amendment to exempt small businesses from these new civil financial penalties, but it was defeated 21-28 on a party-line vote.
- **Permanently replace striking workers (P. 123)**
This new prohibition would prohibit employers from hiring new, permanent workers to replace workers engaged in a strike. The National Labor Relations Act (NLRA) has previously allowed employers to hire new workers to ensure the "free flow of commerce." During a markup of this legislation at the House Committee on Education and Labor, Rep. Tim Walberg (R-MI) offered an amendment to remove this section from the bill. Walberg's amendment failed 21-28 on a party-line vote.
- **Lock out workers (p. 123)**
Employers would be prohibited from locking out employees (stopping them from coming to work) prior to a strike by a union.
- **Misclassify an employee (p. 123)**
The bill would add new penalties if an employer misclassifies an employee as an independent contractor or supervisor.
- **Stop employer meetings on unionization (p. 124)**
Employers would be prohibited from requiring workers to hear their views on unionization during work hours when a union organizing campaign is taking place.
- **Enter into a class action arbitration agreement with an employee (p. 124)**
This new prohibition would prevent employers and employees from entering voluntary agreements to resolve employment issues outside of court.
- **Union Neutrality for Direct Care Grant Recipients (p. 151)**
A grant fund of \$1.48 billion is created to support the Direct Care workforce, with funds available through September 30, 2031. To be eligible to seek a direct care workforce grant, an entity must have "a plan for ensuring that the eligible entity will remain neutral in any organizing effort involving direct care workers served by the grant who seek to form, join, or assist a labor organizing." (p. 151)

Bill Status: *The legislation was approved by the House and awaits consideration in the Senate.*
