

**AMENDMENT TO RULES COMMITTEE PRINT**

**116-63**

**OFFERED BY MS. FINKENAUER OF IOWA**

Page 9, after the item relating to section 12606, insert the following:

Sec. 12607. Labor Standards.

At the end of subtitle F, insert the following:

**1 SEC. 12607 LABOR STANDARDS.**

2 (a) IN GENERAL.—Notwithstanding any other provi-  
3 sion of law, for fiscal year 2021 and each fiscal year there-  
4 after, any construction or maintenance projects, including  
5 installation or removal of applicable infrastructure, as-  
6 sisted in whole or in part by funds appropriated under  
7 sections 1203, 1221, 1802, 1803, 1804, 1805, 2122,  
8 2401, 2502, 2503, 2504, 2505, 2522, 2523, 2524, 2525,  
9 2542, 2543, 2544, 2545, 2547, 2552, 2553, 2561, 3102,  
10 3103, 3104, 3105, 3106, 3107, 3109, 3110, 3111, 3112,  
11 3201, 4101, 4202, 5101, 5301, 5302, 5321, 5322, 5323,  
12 5324, 5341, 5342, 6201, 6301, 6502, 6512, 7001, 8101,  
13 8102, 8206, 8304, 9105, 9302, 9304, 10121, and 12401  
14 of this Act and including 42 U.S.C. 17011 and 42 U.S.C.  
15 16061, without regard to the form or type of Federal as-

1 sistance provided under such section or part, shall comply  
2 with labor standards under this section. Compliance with  
3 labor standards under this section shall also apply to enti-  
4 ties that are awarded permits, leases or enter into agree-  
5 ments with the Federal Government under subtitle F of  
6 Title II of this Act.

7 (b) CERTIFICATION OF QUALIFIED ENTITIES.—

8 (1) IN GENERAL.—The Secretary of Labor shall  
9 establish a process for certifying entities that submit  
10 an application under paragraph (2) as qualified enti-  
11 ties with respect to construction and maintenance  
12 projects funded in part or whole under sections  
13 1203, 1221, 1802, 1803, 1804, 1805, 2122, 2401,  
14 2502, 2503, 2504, 2505, 2522, 2523, 2524, 2525,  
15 2542, 2543, 2544, 2545, 2547, 2552, 2553, 2561,  
16 3102, 3103, 3104, 3105, 3106, 3107, 3109, 3110,  
17 3111, 3112, 3201, 4101, 4202, 5101, 5301, 5302,  
18 5321, 5322, 5323, 5324, 5341, 5342, 6201, 6301,  
19 6502, 6512, 7001, 8101, 8102, 8206, 8304, 9105,  
20 9302, 9304, 10121, and 12401 of this Act and in-  
21 cluding 42 U.S.C. 17011 and 42 U.S.C. 16061.

22 (2) APPLICATION PROCESS.—An entity seeking  
23 certification as a qualified entity under this section  
24 shall submit an application to the Secretary of  
25 Labor at such time, in such manner, and containing

1 such information as the Secretary may reasonably  
2 require, including information to demonstrate com-  
3 pliance with the requirements under subsection (c).

4 (3) REQUESTS FOR ADDITIONAL INFORMA-  
5 TION.—Not later than 1 year after receiving an ap-  
6 plication from an entity under paragraph (2)—

7 (A) the Secretary of Labor may request  
8 additional information from the entity in order  
9 to determine whether the entity is in compliance  
10 with the requirements under subsection (c); and

11 (B) the entity shall provide such additional  
12 information within 30 days of the Secretary of  
13 Labor's request under subparagraph (A).

14 (4) DETERMINATION DEADLINE.—The Sec-  
15 retary of Labor shall make a determination on  
16 whether to certify an entity under this section not  
17 later than—

18 (A) in a case in which the Secretary re-  
19 quests additional information described in para-  
20 graph (3), 1 year after the Secretary receives  
21 such additional information from the entity, or

22 (B) in a case that is not described in para-  
23 graph (3)(A), 1 year after the date on which  
24 the entity submits the application under para-  
25 graph (2).

1           (5) PRECERTIFICATION REMEDIES.—The Sec-  
2           retary shall consider any corrective actions taken by  
3           an entity seeking certification under this subsection  
4           to remedy an administrative merits determination,  
5           arbitral award or decision, or civil judgment identi-  
6           fied under subsection (c)(3) and shall impose as a  
7           condition of certification any additional remedies  
8           necessary to avoid further or repeated violations.

9           (c) LABOR STANDARDS REQUIREMENTS.—The Sec-  
10          retary of Labor shall require an entity, as a condition of  
11          certification under this section, to satisfy each of the fol-  
12          lowing requirements:

13               (1) The entity shall ensure that all laborers and  
14               mechanics employed by contractors and subcontractors  
15               in the performance of any construction or main-  
16               tenance project shall be paid wages at rates not less  
17               than those prevailing on projects of a similar char-  
18               acter in the locality as determined by the Secretary  
19               of Labor in accordance with subchapter IV of chap-  
20               ter 31 of title 40, United States Code (commonly  
21               known as the “Davis-Bacon Act”).

22               (2) In the case of any construction or mainte-  
23               nance project, the cost of which exceeds  
24               \$25,000,000, the entity shall be a party to, or re-  
25               quire contractors and subcontractors in the perform-

1       ance of such construction or maintenance project to  
2       consent to, a covered project labor agreement.

3           (3) The entity, and all contractors and sub-  
4       contractors in performance of any construction or  
5       maintenance project, shall represent in the applica-  
6       tion submitted under subsection (b)(2) (and periodi-  
7       cally thereafter during the performance of the con-  
8       struction or maintenance project as the Secretary of  
9       Labor may require) whether there has been any ad-  
10      ministrative merits determination, arbitral award or  
11      decision, or civil judgment, as defined in guidance  
12      issued by the Secretary of Labor, rendered against  
13      the entity in the preceding 3 years (or, in the case  
14      of disclosures after the initial disclosure, during such  
15      period as the Secretary of Labor may provide) for  
16      violations of—

17           (A) the Fair Labor Standards Act of 1938  
18           (29 U.S.C. 201 et seq.);

19           (B) the Occupational Safety and Health  
20           Act of 1970 (29 U.S.C. 651 et seq.);

21           (C) the Migrant and Seasonal Agricultural  
22           Worker Protection Act (29 U.S.C. 1801 et  
23           seq.);

24           (D) the National Labor Relations Act (29  
25           U.S.C. 151 et seq.);

1 (E) subchapter IV of chapter 31 of title  
2 40, United States Code (commonly known as  
3 the “Davis-Bacon Act”);

4 (F) chapter 67 of title 41, United States  
5 Code (commonly known as the “Service Con-  
6 tract Act”);

7 (G) Executive Order 11246, as amended  
8 (relating to equal employment opportunity);

9 (H) section 503 of the Rehabilitation Act  
10 of 1973 (29 U.S.C. 793);

11 (I) section 4212 of title 38, United States  
12 Code;

13 (J) the Family and Medical Leave Act of  
14 1993 (29 U.S.C. 2601 et seq.);

15 (K) title VII of the Civil Rights Act of  
16 1964 (42 U.S.C. 2000e et seq.);

17 (L) the Americans with Disabilities Act of  
18 1990 (42 U.S.C. 12101 et seq.);

19 (M) the Age Discrimination in Employ-  
20 ment Act of 1967 (29 U.S.C. 621 et seq.);

21 (N) Executive Order 13658, dated Feb-  
22 ruary 2014, (entitled “Establishing a Minimum  
23 Wage for Contractors”); or

24 (O) equivalent State laws, as defined in  
25 guidance issued by the Secretary of Labor.

1           (4) The entity, and all contractors and sub-  
2           contractors in the performance of construction or  
3           maintenance project, shall not require arbitration for  
4           any dispute involving an employee described in para-  
5           graph (5) engaged in a service for the entity or any  
6           contractor and subcontractor, or enter into any  
7           agreement with such employee requiring arbitration  
8           of any such dispute, unless such employee is covered  
9           by a collective bargaining agreement that provides  
10          otherwise.

11          (5) For purposes of compliance with the Na-  
12          tional Labor Relations Act (29 U.S.C. 151 et seq.),  
13          the Fair Labor Standards Act of 1938 (29 U.S.C.  
14          201 et seq.), and the requirements under this sec-  
15          tion, the entity, and all contractors and subcontrac-  
16          tors in the performance of any construction or main-  
17          tenance project, shall consider an individual per-  
18          forming any service in such performance as an em-  
19          ployee (and not an independent contractor) of the  
20          entity, contractor, or subcontractor, respectively, un-  
21          less—

22                 (A) the individual is free from control and  
23                 direction in connection with the performance of  
24                 the service, both under the contract for the per-  
25                 formance of the service and in fact;

1 (B) the service is performed outside the  
2 usual course of the business of the entity, con-  
3 tractor, or subcontractor, respectively; and

4 (C) the individual is customarily engaged  
5 in an independently established trade, occupa-  
6 tion, profession, or business of the same nature  
7 as that involved in such service.

8 (6) The entity shall prohibit all contractors and  
9 subcontractors in the performance of any construc-  
10 tion or maintenance project from hiring employees  
11 through a temporary staffing agency unless the rel-  
12 evant State workforce agency certifies that tem-  
13 porary employees are necessary to address an acute,  
14 short-term labor demand.

15 (7) The entity shall require all contractors, sub-  
16 contractors, successors in interest of the entity, and  
17 other entities that may acquire the entity, in the  
18 performance or acquisition of any construction or  
19 maintenance project, to have and abide by an ex-  
20 plicit neutrality policy on any issue involving the ex-  
21 ercise by employees of the entity as described in  
22 paragraph (5), and of all contractors and sub-  
23 contractors in the performance of any construction  
24 or maintenance project, of the right to organize and



1       bargain collectively through representatives of their  
2       own choosing.

3           (8) The entity shall require all contractors and  
4       subcontractors to participate in a registered appren-  
5       ticeship program for each skilled craft employed on  
6       any construction or maintenance project.

7           (9) The entity, and all contractors and sub-  
8       contractors in the performance of any construction  
9       or maintenance project, shall not request or other-  
10      wise consider the criminal history of an applicant for  
11      employment before extending a conditional offer to  
12      the applicant, unless—

13           (A) a background check is otherwise re-  
14      quired by law;

15           (B) the position is for a Federal law en-  
16      forcement officer (as defined in section  
17      115(c)(1) of title 18, United States Code) posi-  
18      tion; or

19           (C) the Secretary of Labor, after consulta-  
20      tion with the Secretary of Energy, certifies that  
21      precluding criminal history prior to the condi-  
22      tional offer would pose a threat to national se-  
23      curity.

24      (d) DAVIS-BACON ACT.—The Secretary of Labor  
25      shall have, with respect to the labor standards described

1 in subsection (d)(1), the authority and functions set forth  
2 in Reorganization Plan Numbered 14 of 1950 (64 Stat.  
3 1267; 5 U.S.C. App.) and section 3145 of title 40, United  
4 States Code.

5 (e) PERIOD OF VALIDITY FOR CERTIFICATIONS.—A  
6 certification made under this section shall be in effect for  
7 a period of 5 years. An entity may reapply to the Secretary  
8 of Labor for an additional certification under this section  
9 in accordance with the application process under sub-  
10 section (b)(2).

11 (f) REVOCATION OF QUALIFIED ENTITY STATUS.—  
12 The Secretary of Labor may revoke the certification of an  
13 entity under this section as a qualified entity at any time  
14 in which the Secretary reasonably determines the entity  
15 is no longer in compliance with the requirements of sub-  
16 section (c).

17 (g) CERTIFICATION MAY COVER MORE THAN 1 SUB-  
18 STANTIALLY SIMILAR PROJECT.—The Secretary of Labor  
19 may make certifications under this section which apply  
20 with respect to more than 1 project if the projects to which  
21 such certification apply are substantially similar projects  
22 which meet the requirements of this section. Such projects  
23 shall be treated as a specific construction or maintenance  
24 project for purposes of subsection (h)(2).

25 (h) DEFINITIONS.—In this section:

1 (1) COVERED PROJECT LABOR AGREEMENT.—

2 The term “covered project labor agreement” means  
3 a project labor agreement that—

4 (A) binds all contractors and subcontractors  
5 on the construction project through the inclusion  
6 of appropriate specifications in all relevant  
7 solicitation provisions and contract documents;  
8

9 (B) allows all contractors and subcontractors  
10 to compete for contracts and subcontracts  
11 without regard to whether they are otherwise a  
12 party to a collective bargaining agreement;

13 (C) contains guarantees against strikes,  
14 lockouts, and other similar job disruptions;

15 (D) sets forth effective, prompt, and mutually  
16 binding procedures for resolving labor disputes  
17 arising during the covered project labor  
18 agreement; and

19 (E) provides other mechanisms for labor-  
20 management cooperation on matters of mutual  
21 interest and concern, including productivity,  
22 quality of work, safety, and health.

23 (2) PROJECT LABOR AGREEMENT.—The term  
24 “project labor agreement” means a pre-hire collective  
25 bargaining agreement with one or more labor

1 organizations that establishes the terms and condi-  
2 tions of employment for a specific construction  
3 project and is described in section 8(f) of the Na-  
4 tional Labor Relations Act (29 U.S.C. 158(f)).

5 (3) QUALIFIED ENTITY.—The term “qualified  
6 entity” means an applicant for certification under  
7 subsection (b) that the Secretary of Labor certifies  
8 as a qualified entity in accordance with subsection  
9 (b).

10 (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
11 authorized to be appropriated to carry out this such sums  
12 as necessary for fiscal year 2020 and each fiscal year  
13 thereafter.

