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## **OLR Bill Analysis**

### **sSB 999**

#### ***AN ACT CONCERNING A JUST TRANSITION TO CLIMATE-PROTECTIVE ENERGY PRODUCTION AND COMMUNITY INVESTMENT.***

#### **SUMMARY**

This bill requires the developers of covered renewable energy projects to meet certain requirements if their project has a total construction cost of at least \$2.5 million. These developers must generally (1) enter into a community benefits agreement with a community organization representing the host community's residents, (2) establish a workforce development program, and (3) ensure that the contractors and subcontractors on the project meet certain criteria.

The bill also requires that (1) construction workers on the projects be paid wages and benefits at least equal to those required under the state's prevailing wage law and (2) operations, maintenance, and security employees in any building or facility created in the project be paid wages and benefits that are at least equal to those required under the state's standard wage law (see BACKGROUND). Under the bill, however, the prevailing wage requirement does not apply if the project is covered by a project labor agreement that meets certain requirements.

EFFECTIVE DATE: Upon passage

#### **COVERED PROJECTS**

The bill's requirements apply to "covered projects," which under the bill are construction projects that concern or are related to developing a renewable energy project, and the facility or facilities created in the construction project, with a total construction cost of at least \$2.5 million.

Under the bill, a "renewable energy project" is a project that is

intended to, or will, enhance energy efficiency, upgrade building electrification, develop renewable energies, or enhance climate change resiliency. It includes projects that create useable energy from solar power; wind power; fuel cells; geothermal sources; landfill methane gas; anaerobic digestion or other biogas derived from biological sources; thermal electric direct energy converted from a certified Class I renewable energy source; ocean thermal power; wave or tidal power; low emission advanced renewable energy conversion technologies and zero emission low grade heat power generation systems based on organic oil-free Rankine, Kalina, or similar nonstream cycles that use waste heat from an industrial or commercial process that does not generate electricity; a run-of-the-river hydropower facility; or a biomass facility that uses sustainable biomass fuel.

(To the extent that the bill applies to covered projects that are currently in development or under construction, it may implicate the U.S. Constitution's Contracts Clause (Article 1, Section 10), which generally prohibits states from passing laws that impair contractual obligations.)

### **COMMUNITY BENEFITS AGREEMENTS**

The bill requires a covered project's developer to take all necessary actions to ensure that a community benefits agreement is entered into with the appropriate community organizations representing residents of the community where the project will be located (the host community).

Under the bill, a "community benefits agreement" is an agreement between the covered project's developer and community-based organizations, or a coalition of them, that details the project's (1) contributions to the host community and (2) aspects that will mitigate the host community's adverse conditions and create opportunities for local business, communities, and workers.

### **WORKFORCE DEVELOPMENT PROGRAMS**

The bill also requires a covered project's developer to take all necessary actions to ensure that a workforce development program is

established. Under the bill, a “workforce development program” is a program that gives newly hired and existing employees the opportunity to develop skills that will enable them to qualify for higher paying jobs on a covered project. This includes (1) apprenticeship training through an apprenticeship program registered with the state Department of Labor (DOL) or a federally recognized state apprenticeship agency that complies with federal regulations on apprenticeships and (2) pre-apprenticeship training that will enable students to qualify for registered apprenticeship training.

### **CONTRACTOR AND SUBCONTRACTOR CERTIFICATIONS**

The bill requires a covered project’s developer to take all necessary actions to ensure that each contractor and subcontractor involved in building the project completes a sworn certification that:

1. it has the necessary resources to perform its portion of the covered project, including the necessary technical, financial, and personnel resources;
2. it has all of the contractor, specialty contractor, or trade licenses, certifications, or certificates required by the applicable state or local laws;
3. it participates in apprenticeship training through a DOL-registered apprenticeship program or a federally recognized state apprenticeship agency that complies with federal regulations;
4. during the previous three years it has not (a) been debarred by a government agency; (b) defaulted on a project; (c) had any license, certification, or other business credential revoked or suspended; or (d) been found in violation of any law applicable to the contractor’s or subcontractor’s business that resulted in the payment of a fine, back pay damages, or any other type of penalty of at least \$10,000;
5. it will not pay personnel employed on the project less than the applicable wage and fringe benefit rates for the classification in

which the personnel are employed and required for the project;  
and

6. it has not misclassified and will not misclassify employees as independent contractors.

The bill requires the developer to submit the certifications to the labor commissioner at least 30 days before construction of the project begins. Under the bill, the certifications are public documents that must be made available without redaction on DOL's website within seven days after they were submitted.

### ***Penalties***

If a certification contains false, misleading, or inaccurate information, the bill subjects the contractor or subcontractor that prepared it, after notice and opportunity to be heard (presumably before the labor commissioner), to a three-year debarment from future public and publicly covered projects (it is unclear what "public and publicly covered projects" are), plus other applicable penalties and sanctions. (The bill does not specify further details or procedures for these notice and hearing requirements.)

Under the bill, a developer's failure to take reasonable steps to ensure that the certifications are accurate and truthful is a violation of the bill subject to penalties and sanctions for noncompliance. It requires the labor commissioner to adopt regulations that establish the applicable penalties and sanctions for this noncompliance.

### **PREVAILING AND STANDARD WAGES**

The bill requires each contractor and subcontractor on a covered project to pay each construction employee on the project at least the wages and benefits that the state's prevailing wage law require for the employee's corresponding job classification on a public works project.

It subjects the contractors and subcontractors to the prevailing wage law's reporting and compliance requirements, and its penalties and sanctions for violations. Among other things, this (1) requires them to submit monthly certified payroll records with certain specified

information (e.g., that the wages and benefits meet prevailing wage requirements and that employees have the necessary workers' compensation insurance coverage); (2) subjects them to fines between \$2,500 and \$5,000 for willful failures to pay the required wages; and (3) makes failing to file the certified payroll records a class D felony subject to a fine of up to \$5,000, five years imprisonment, or both. (The extent to which these provisions would apply, however, is unclear, as the bill does not make conforming changes in the prevailing wage law. For example, the prevailing wage law requires employers to file their certified payroll records with the public agency that contracted for the work, but the bill does not specify with whom the contractors and subcontractors must file their records.)

The bill also requires that each operations, maintenance, and security employee employed in a building or facility that is built in a covered project be paid at least the prevailing wage (which by law, generally does not apply to these types of employees) or the "standard wage," including benefits, for the employee's corresponding job classification. (The bill cites to an incorrect statute for the standard wage law.)

### ***Exemption for Project Labor Agreements***

The bill exempts construction projects that are covered by a project labor agreement (PLA) from its prevailing wage requirements. Under the bill, the PLA must:

1. bind all contractors and subcontractors on the covered project to the PLA by including specifications in all relevant solicitation provisions and contract documents;
2. allow all contractors and subcontractors to compete for contracts and subcontracts on the project regardless of whether they are parties to collective bargaining agreements;
3. establish uniform terms and conditions of employment for all construction labor employed on the project;
4. guarantee against strikes, lockouts, and similar job disruptions;

5. have effective, prompt, and mutually binding procedures for resolving labor disputes; and
6. include any other provisions negotiated by the parties to promote the covered project's successful delivery.

## **BACKGROUND**

### ***Prevailing Wage***

The state's prevailing wage law requires employers on certain public works projects to pay their construction workers wages and benefits equal to those that are customary or prevailing for the same work, in the same trade or occupation, in the same town. The law allows the DOL to (1) hold hearings to gather data and calculate prevailing wage rates or (2) use the rates calculated by the federal Department of Labor for Connecticut. In practice, DOL uses the federally calculated rates (CGS § 31-53).

### ***Standard Wage***

The state's standard wage law generally requires private contractors who do building and property maintenance, property management, and food service work in state buildings to pay their employees wages and benefits determined by the labor commissioner. In general, an employee's standard wage equals the hourly wage and benefits received by the most employees doing the same type of work under a union contract, as long as the contract covers at least 500 employees in Hartford County. If there is no such contract, then the commissioner sets the hourly rate based on the Federal Register of Wage Determinations, plus a 30% surcharge for health and retirement benefits (CGS § 31-57f).

## **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/23/2021)