
OLR Bill Analysis

sSB 999 (File 404, as amended by Senate "A")*

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

SUMMARY

This bill requires renewable energy project developers to meet certain requirements if their project (1) begins construction after July 1, 2021; (2) has a total nameplate (i.e., generating) capacity of at least two megawatts (MW); and (3) meets certain other criteria.

These developers must generally (1) establish a workforce development program; (2) enter into a community benefits agreement with a community organization representing the host community's residents, if the project has a nameplate capacity of at least five MW; and (3) ensure that the contractors and subcontractors on the project meet certain criteria.

The bill also requires that (1) construction workers on covered 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.

*Senate Amendment "A" (1) redefines "covered projects" as renewable energy projects that begin construction on or after July 1, 2021, and have a total nameplate capacity rating of at least two MW, rather than any renewable energy project that has a total construction cost of at least \$2.5 million (§ 1); (2) explicitly excludes certain projects from being covered projects (§ 1); (3) applies the state debarment law

to certain violations under the bill (§ 2); (4) creates a penalty for making a false statement on a sworn certification under the bill (§ 4); and (5) makes various minor and conforming changes (§§ 1 & 3).

EFFECTIVE DATE: Upon passage

COVERED PROJECTS

The bill's requirements apply to "covered projects," which under the bill are renewable energy projects situated on land in the state that begin construction on or after July 1, 2021, and have a total nameplate capacity rating of at least two MW. They do not include renewable energy projects (1) selected in a competitive solicitation conducted by the Department of Energy and Environmental Protection (DEEP) or an electric distribution company (i.e., Eversource or United Illuminating) and (2) approved by the Public Utilities Regulatory Authority before January 1, 2022.

Under the bill, a "renewable energy project" is a Class I renewable energy source (e.g., solar, wind, fuel cells), but it does not include any offshore wind facility procured under certain laws that authorize DEEP to solicit proposals to procure power from these resources.

WORKFORCE DEVELOPMENT PROGRAMS

The bill requires a covered project's developer to take appropriate 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.

COMMUNITY BENEFITS AGREEMENTS

If a covered project has a nameplate capacity of at least five MW, the

bill requires the project's developer to also take all reasonable 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 (i.e., 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.

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 sworn certifications to the labor commissioner at least 30 days before project construction 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 materially inaccurate information, the bill subjects the contractor or subcontractor that prepared it, after notice and opportunity to be heard, to (1) debarment under the state's debarment law and (2) the penalty for false statement on a sworn certification.

Debarment. The state's debarment law generally makes a person or firm that disregarded its obligations under the state's prevailing wage law ineligible to (1) contract with the state or its political subdivisions and (2) work on a public works project covered by the prevailing wage law. It requires the labor commissioner to distribute a list of these debarred persons and firms to all state agencies and political subdivisions. The bill requires the commissioner to include on the list persons or firms that he found to have submitted false, misleading, or materially inaccurate information on the sworn certifications required by the bill.

By law, (1) state agencies and political subdivisions cannot award contracts to persons and firms on the list and (2) general contractors on a prevailing wage public works project cannot award any work under the contract to a person or firm on the list. Both bans last for a period of up to three years, as determined by the labor commissioner, after

the debarred person or firm first appears on the list (CGS § 31-53a(b)).

False Statement on a Sworn Certification. Under the bill, someone is guilty of false statement on a sworn certificate if they intentionally make a false written statement on the certification, which they did not believe to be true, and which was intended to mislead the developer or the labor commissioner. The bill makes false statement on a sworn certification a class D felony (punishable by up to five years' imprisonment, up to a \$5,000 fine, or both).

Other Noncompliance Penalties. 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) to the project's developer; (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 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 or the “standard wage,” including benefits, for the employee’s corresponding job classification.

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 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 requirement applies to new construction projects of \$1 million or more and renovation projects of \$100,000 or more (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)