



Senate

General Assembly

File No. 404

January Session, 2021

Substitute Senate Bill No. 999

Senate, April 12, 2021

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section,
2 unless the context otherwise requires:

3 (1) "Covered project" means a construction project that concerns the
4 development of a renewable energy project or is related thereto, and the
5 facility or facilities created in such construction project, with a total
6 construction cost of two million five hundred thousand dollars or more;

7 (2) "Renewable energy project" means a project that is intended to or
8 will have the effect of enhancing energy efficiency, upgrading building
9 electrification, developing renewable energies or enhancing climate
10 change resiliency, including projects that create useable energy from
11 solar power, wind power, a fuel cell, geothermal sources, landfill
12 methane gas, anaerobic digestion or other biogas derived from

13 biological sources, thermal electric direct energy conversion from a
14 certified Class I renewable energy source, ocean thermal power, wave
15 or tidal power, low emission advanced renewable energy conversion
16 technologies and zero emission low grade heat power generation
17 systems based on organic oil free rankine, kalina or similar nonstream
18 cycles that use waste heat from an industrial or commercial process that
19 does not generate electricity, a run-of-the-river hydropower facility or a
20 biomass facility that uses sustainable biomass fuel;

21 (3) "Community benefits agreement" means an agreement between
22 (A) the developer of a covered project, and (B) community-based
23 organizations or a coalition of such organizations, that details the
24 project's contributions to the community in which it is or will be sited
25 and the aspects of the project that will mitigate adverse conditions of
26 such community and create opportunities for local businesses,
27 communities and workers;

28 (4) "Labor organization" means any organization that exists and is
29 constituted for the purpose, in whole or in part, of collective bargaining
30 or of dealing with employers concerning grievances, terms or conditions
31 of employment, or of other mutual aid or protection and that is not a
32 company union, including, but not limited to, bona fide labor
33 organizations that are certified or recognized as the organization of
34 jurisdiction representing the workers involved or bona fide building
35 and construction trades councils or district councils and state and local
36 labor federations comprised of local unions certified or recognized as
37 the representative of the workers; and

38 (5) "Workforce development program" means a program pursuant to
39 which newly hired employees and existing employees are given the
40 opportunity to develop skills that will enable such employees to qualify
41 for higher paying jobs on a covered project. A workforce development
42 program includes: (A) Apprenticeship training through an
43 apprenticeship program registered with the Labor Department or a
44 federally recognized state apprenticeship agency that complies with the
45 requirements under 29 CFR 29 and 29 CFR 30, as each may be amended

46 from time to time, and (B) preapprenticeship training that will enable
47 students to qualify for registered apprenticeship training.

48 (b) The developer of a covered project shall take all necessary actions
49 to ensure that (1) a community benefits agreement is entered into with
50 appropriate community organizations representing residents of the
51 community in which the project is or will be located, and (2) a workforce
52 development program is established.

53 (c) The developer of a covered project shall take all necessary actions
54 to ensure that each contractor and subcontractor involved in the
55 construction of the project completes a sworn certification that the
56 contractor or subcontractor: (1) Has the necessary resources to perform
57 the portion of the covered project to which the contractor or
58 subcontractor are assigned, including the necessary technical, financial
59 and personnel resources; (2) has all required contractor, specialty
60 contractor or trade licenses, certifications or certificates required of any
61 business entity or individual by applicable state or local law; (3)
62 participates in apprenticeship training through an apprenticeship
63 program registered with the Labor Department or a federally
64 recognized state apprenticeship agency that complies with the
65 requirements under 29 CFR 29 and 29 CFR 30, as each may be amended
66 from time to time; (4) during the previous three years (A) has not been
67 debarred by any government agency; (B) has not defaulted on any
68 project; (C) has not had any license, certification or other credential
69 relating to the business revoked or suspended; and (D) has not been
70 found in violation of any law applicable to the contractor's or
71 subcontractor's business that resulted in the payment of a fine, back pay
72 damages or any other type of penalty in the amount of ten thousand
73 dollars or more; (5) will pay personnel employed on the project not less
74 than the applicable wage and fringe benefit rates for the classification in
75 which such personnel is employed and required for the project; and (6)
76 has not misclassified and will not misclassify labor employees as
77 independent contractors.

78 (d) The developer of a covered project shall submit to the Labor

79 Commissioner the certification of compliance specified in subsection (c)
80 of this section not later than thirty days prior to commencement of
81 construction of the project. Such certification shall be considered a
82 public document that shall be made available without redaction on the
83 Labor Department's Internet web site not later than seven days after
84 being submitted to the Labor Commissioner. If a certification contains
85 false, misleading or inaccurate information, the contractor or
86 subcontractor that executed such certification shall, after notice and
87 opportunity to be heard, be subject to a three-year debarment from
88 future public and publicly covered projects and be subject to other
89 applicable penalties and sanctions.

90 (e) The failure of the developer of a covered project to take reasonable
91 steps to ensure that the certification submitted to the Labor
92 Commissioner pursuant to subsection (d) of this section are accurate
93 and truthful shall constitute a violation of this section and shall be
94 subject to penalties and sanctions for conduct constituting
95 noncompliance. The commissioner shall adopt regulations, in
96 accordance with the provisions of chapter 54 of the general statutes,
97 establishing the penalties and sanctions applicable to a violation of this
98 subsection.

99 (f) (1) Each contractor and subcontractor on a covered project shall
100 (A) pay each construction employee on the project wages and benefits
101 that are not less than the prevailing wage and fringe benefit rates
102 prescribed in section 31-53 of the general statutes for the corresponding
103 classification in which the employee is employed, and (B) be subject to
104 all reporting and compliance requirements of section 31-53 of the
105 general statutes. Contractors and subcontractors that violate this
106 subsection shall be subject to penalties and sanctions in accordance with
107 section 31-53 of the general statutes.

108 (2) Each operations, maintenance and security employee employed
109 in a building or facility that is constructed in a covered project shall be
110 paid wages and benefits that are not less than the prevailing wage and
111 fringe benefit rates prescribed in section 31-53 of the general statutes or,

112 if applicable, the standard wage specified in section 31-53 of the general
113 statutes for the corresponding classification in which the employee is
114 employed.

115 (g) Prevailing wage requirements under subsection (f) of this section
116 shall not apply to a construction project that is covered by a project labor
117 agreement. For the purposes of this subsection, "project labor
118 agreement" means an agreement that: (1) Binds all contractors and
119 subcontractors on the covered project to the project labor agreement
120 through the inclusion of specifications in all relevant solicitation
121 provisions and contract documents; (2) allows all contractors and
122 subcontractors to compete for contracts and subcontracts on the project
123 without regard to whether they are otherwise parties to collective
124 bargaining agreements; (3) establishes uniform terms and conditions of
125 employment for all construction labor employed on the projects; (4)
126 guarantees against strikes, lockouts and similar job disruptions; (5) sets
127 forth effective, prompt and mutually binding procedures for resolving
128 labor disputes arising during the project labor agreement; and (6)
129 includes any other provisions as negotiated by the parties to promote
130 successful delivery of the covered project.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In Subsec. (a)(3), "such" was added before organizations for clarity and "it is sited" was changed to "it is or will be sited" for accuracy; in Subsec. (a)(5)(A), "as each may be amended from time to time" was added for accuracy and consistency with standard drafting conventions; in Subsec. (b), "affected community" was changed to "community in which the project is or will be located" for clarity and accuracy; Subsec. (c)(4) was rewritten for accuracy and consistency; Subsec. (c)(5) was rewritten for clarity and for consistency with standard drafting conventions; in Subsec. (d), "a publicly available web site" was changed to "the Labor Department's Internet web site" for clarity and accuracy; in Subsec. (e), "shall permit the state to impose appropriate" was changed to "shall be

subject to" for consistency with standard drafting conventions and "described in this subdivision" was changed to "applicable to a violation of this subsection" for accuracy; in Subsec. (f)(1), "at a minimum" was deleted for consistency with standard drafting conventions; in Subsec. (f)(2), "created" was changed to "constructed" for consistency with standard drafting conventions, "prevailing wage" was changed to "prevailing wage and fringe benefit rates" for consistency and "31-57" was changed to "31-53" for accuracy; and in Subsec. (g), "appropriate" was deleted for consistency with standard drafting conventions.

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Resources of the General Fund	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 22 \$	FY 23 \$
Various Municipalities	Potential Cost	See Below	See Below

Explanation

The bill requires certain renewable energy and efficiency construction projects to meet prevailing wage standards and requires developers to enter into community host agreements.

There is a potential cost to municipalities resulting from the bill, which may increase the costs of certain covered projects that are funded by towns. To the extent that the bill increases the total cost of covered projects by requiring that workers be paid the prevailing wage, there is a cost equal to the differential in labor-related costs between such wages and those that would otherwise apply. This does not impact projects that currently must comply with prevailing wage laws or are covered by a project labor agreement.

There is also a potential General Fund revenue gain from penalties for noncompliance with the bill's provisions. The bill specifies that violations result in penalties and sanctions but does not specify further details. As such, any potential revenue is anticipated to be minimal, and

enforcement by the Department of Labor is not anticipated to result in any costs to the agency.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to amount in penalties assessed by the Department of Labor and the number of such covered projects funded by municipalities.

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)