



Senate

File No. 779

General Assembly

January Session, 2021

(Reprint of File No. 404)

Substitute Senate Bill No. 999
As Amended by Senate Amendment
Schedule "A" and House Amendment
Schedule "A"

Approved by the Legislative Commissioner
June 2, 2021

**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 July 1, 2021*) (a) As used in this section,
2 unless the context otherwise requires:

3 (1) "Covered project" means a renewable energy project that is
4 situated on land in this state, commences construction on or after July 1,
5 2021, and has a total nameplate capacity of two megawatts or more.
6 "Covered project" does not include any renewable energy project (A)
7 selected in a competitive solicitation conducted by (i) the Department of
8 Energy and Environmental Protection, or (ii) an electric distribution
9 company, as defined in section 16-1 of the general statutes, and (B)
10 approved by the Public Utilities Regulatory Authority prior to January
11 1, 2022;

12 (2) "Renewable energy project" means a Class I renewable energy

13 source, as defined in section 16-1 of the general statutes. "Renewable
14 energy project" does not include any offshore wind facility procured
15 pursuant to section 16a-3h, 16a-3m or 16a-3n of the general statutes;

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

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

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

43 (b) The developer of a covered project shall (1) take all reasonable
44 actions to ensure that a community benefits agreement is entered into

45 with appropriate community organizations representing residents of
46 the community in which the project is or will be located if the nameplate
47 capacity of the project is five megawatts or more, and (2) take
48 appropriate actions to ensure a workforce development program is
49 established.

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

75 (d) The developer of a covered project shall submit to the Labor
76 Commissioner the sworn certification of compliance specified in
77 subsection (c) of this section not later than thirty days prior to
78 commencement of construction of the project. Such sworn certification

79 shall be considered a public document that shall be made available
80 without redaction on the Labor Department's Internet web site not later
81 than seven days after being submitted to the Labor Commissioner. If a
82 sworn certification contains false, misleading or materially inaccurate
83 information, the contractor or subcontractor that executed such sworn
84 certification shall, after notice and opportunity to be heard, be subject to
85 debarment pursuant to section 31-53a of the general statutes, as
86 amended by this act.

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

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

106 (2) Each operations, maintenance and security employee employed
107 in a building or facility that is constructed in a covered project shall be
108 paid wages and benefits that are not less than the prevailing wage and
109 fringe benefit rates prescribed in section 31-53 of the general statutes, as
110 amended by this act, or, if applicable, the standard wage specified in
111 section 31-57f of the general statutes for the corresponding classification

112 in which the employee is employed.

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

129 Sec. 2. Subsection (a) of section 31-53a of the general statutes is
130 repealed and the following is substituted in lieu thereof (*Effective July 1,*
131 *2021*):

132 (a) The State Comptroller or the contracting authority acting
133 pursuant to section 31-53, as amended by this act, is hereby authorized
134 and directed to pay to mechanics, laborers and workers from any
135 accrued payments withheld under the terms of a contract terminated
136 pursuant to subsection (b) of [said] section 31-53 any wages found to be
137 due such mechanics, laborers and workers pursuant to [said] section 31-
138 53, as amended by this act. The Labor Commissioner is further
139 authorized and directed to distribute a list to all departments of the state
140 and political subdivisions of the state giving the names of persons or
141 firms whom the Labor Commissioner has found to have (1) disregarded
142 their obligations under [said] section 31-53, as amended by this act, and
143 section 31-76c to employees and subcontractors on public works
144 projects, [or to have] (2) been barred from federal government contracts

145 in accordance with the provisions of the Davis-Bacon Act, 49 Stat. 1011
146 (1931), 40 USC 276a-2, or (3) submitted false, misleading or materially
147 inaccurate information under subsection (d) of section 1 of this act.

148 Sec. 3. Subsection (f) of section 31-53 of the general statutes is repealed
149 and the following is substituted in lieu thereof (*Effective July 1, 2021*):

150 (f) Each employer subject to the provisions of this section, section 31-
151 53c₂ [or] section 31-54 or subsection (f) of section 1 of this act shall (1)
152 keep, maintain and preserve such records relating to the wages and
153 hours worked by each person performing the work of any mechanic,
154 laborer and worker and a schedule of the occupation or work
155 classification at which each person performing the work of any
156 mechanic, laborer or worker on the project is employed during each
157 work day and week in such manner and form as the Labor
158 Commissioner establishes to assure the proper payments due to such
159 persons or employee welfare funds under this section, section 31-53c₂,
160 [or] section 31-54 or subsection (f) of section 1 of this act, regardless of
161 any contractual relationship alleged to exist between the contractor and
162 such person, provided such employer shall have the option of keeping,
163 maintaining and preserving such records in an electronic format, and
164 (2) submit monthly to the contracting agency or the Department of
165 Economic and Community Development pursuant to section 31-53c or
166 to the developer of a covered project, as defined in section 1 of this act,
167 as applicable, by mail, electronic mail or other method accepted by such
168 agency, [or] the Department of Economic and Community
169 Development or such developer, a certified payroll that shall consist of
170 a complete copy of such records accompanied by a statement signed by
171 the employer that indicates (A) such records are correct; (B) the rate of
172 wages paid to each person performing the work of any mechanic,
173 laborer or worker and the amount of payment or contributions paid or
174 payable on behalf of each such person to any employee welfare fund, as
175 defined in subsection (i) of this section, are not less than the prevailing
176 rate of wages and the amount of payment or contributions paid or
177 payable on behalf of each such person to any employee welfare fund, as
178 determined by the Labor Commissioner pursuant to subsection (d) of

179 this section, and not less than those required by the contract to be paid;
 180 (C) the employer has complied with the applicable provisions of this
 181 section, section 31-53c₂ [and] section 31-54 and subsection (f) of section
 182 1 of this act; (D) each such person is covered by a workers' compensation
 183 insurance policy for the duration of such person's employment, which
 184 shall be demonstrated by submitting to the contracting agency the name
 185 of the workers' compensation insurance carrier covering each such
 186 person, the effective and expiration dates of each policy and each policy
 187 number; (E) the employer does not receive kickbacks, as defined in 41
 188 USC 52, from any employee or employee welfare fund; and (F) pursuant
 189 to the provisions of section 53a-157a, the employer is aware that filing a
 190 certified payroll which the employer knows to be false is a class D felony
 191 for which the employer may be fined up to five thousand dollars,
 192 imprisoned for up to five years, or both. This subsection shall not be
 193 construed to prohibit a general contractor from relying on the
 194 certification of a lower tier subcontractor, provided the general
 195 contractor shall not be exempted from the provisions of section 53a-157a
 196 if the general contractor knowingly relies upon a subcontractor's false
 197 certification. Notwithstanding the provisions of section 1-210, the
 198 certified payroll shall be considered a public record and every person
 199 shall have the right to inspect and copy such records in accordance with
 200 the provisions of section 1-212. The provisions of subsections (a) and (b)
 201 of section 31-59 and sections 31-66 and 31-69 that are not inconsistent
 202 with the provisions of this section, section 31-53c or 31-54 apply to this
 203 section. Failing to file a certified payroll pursuant to subdivision (2) of
 204 this subsection is a class D felony for which the employer may be fined
 205 up to five thousand dollars, imprisoned for up to five years, or both.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2021	New section
Sec. 2	July 1, 2021	31-53a(a)
Sec. 3	July 1, 2021	31-53(f)

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 amendment 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.

Senate "A" redefined covered projects in the underlying bill and established penalties for false statements.

House "A" removed the penalties established in Senate "A" and eliminates any potential revenue gain and costs resulting from increased penalties and incarceration related to Class D felony charges.

The Out Years

The potential cost to municipalities outlined above will continue into the future subject to the number of covered projects performed that are not already subject to prevailing wage laws.

The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does 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.

OLR Bill Analysis**sSB 999 (File 404, as amended by House "A" and 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).

*House Amendment "A" removes provisions from the underlying bill (File 404, as amended by Senate Amendment "A") that would have made it a class D felony for contractors and subcontractors to intentionally make a false written statement on a sworn certification.

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.

Debarment 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 debarment under the state's debarment law, which 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.

The debarment law 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)).

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 to the project's developer 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 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)