

REQUIRE PREVAILING WAGE FOR CERTAIN RENEWABLE ENERGY PROJECTS AND MODIFY ENFORCEMENT

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Senate Bill 571 (H-1) as reported from House committee

Sponsor: Sen. John Cherry

House Committee: Labor

Senate Committee: Labor

Complete to 6-23-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 571 would amend 2023 PA 10,¹ an act that requires a policy commonly known as “prevailing wage” for state construction projects receiving public funding, to extend prevailing wage requirements to *energy facility projects* with a *nameplate capacity* of two megawatts or more. Additionally, the bill would require contractors and subcontractors to annually register with the state in order to be eligible for prevailing wage projects and require those contractors and subcontractors to submit certain wage and benefit information to a payroll database.

Energy facility project would mean new construction, completion, demolition, major alteration, or repowering of an *energy storage facility*, a *solar energy facility*, or a *wind energy facility*. (A facility could be located on multiple contiguous or noncontiguous parcels, as long as they share a single point of interconnection to the energy grid.)

Energy storage facility would mean a system that absorbs, stores, and discharges electricity. The term would not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel inputs.

Solar energy facility would mean a system that captures and converts solar energy into electricity for the purpose of sale or for use in locations other than solely the solar facility property. The term would include certain equipment and facilities constructed by an electric provider or independent power producer.

Wind energy facility would mean a system that captures and converts wind energy into electricity for the purpose of sale or for use in locations other than solely the wind facility property. The term would include certain equipment and facilities constructed by an electric provider or independent power producer.

Nameplate capacity would mean the designed full-load sustained generating output of an energy facility, determined by reference to the sustained output of an energy facility even if components of the facility are located on different parcels.

Prevailing wage expansion

Michigan’s prevailing wage law generally requires every contract for a state construction project (*state project*) to include a term stating that the rates of wages and fringe benefits to be

¹ For a summary of the act, see: <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-4007-214A994D.pdf>.

paid to each class of employed *construction mechanics* must equal or exceed the wage and benefit rates that are standard in the locality where the work is to be performed.

Construction mechanic means a mechanic, laborer, worker, helper, assistant, or apprentice working on state projects. It does not include executive, administrative, professional, office, or custodial employees.

Currently, the act generally defines *state project* as construction and improvement projects for public buildings, schools, and other infrastructure authorized by a *contracting agent*. Under SB 571, the term would mean those projects when authorized by a public contracting agent and sponsored or financed in whole or in part by the state, in addition to an energy facility project.

Contracting agent currently means any officer, school board, board or commission of the state, or a state institution supported in whole or in part by state funds, authorized to enter into a contract for a state project or to perform a state project by the direct employment of labor. Under Senate Bill 571, the term would also include a *private contracting agent*, defined as an individual or a partnership, association, trust, corporation, or any other legal entity that enters into a contract for an energy facility project or to perform an energy facility project by the direct employment of labor.

Registration

Senate Bill 571 would require contractors to hold a state project registration when submitting a bid for or performing work on a state project. Any subcontractors listed on a bid proposal for or performing work on a project would also have to be registered, and a contractor could not enter into an agreement with an unregistered subcontractor for work on a state project.

Registrations would be valid for one year, and the Department of Labor and Economic Opportunity (LEO) would have to establish an annual renewal date for all registrations.

To obtain or renew a state project registration, contractors and subcontractors would have to submit an application that includes the following, in addition to any other information and documentation required by LEO:

- The contractor or subcontractor's name, phone number, and principal business address. (If this address is not in Michigan, the contractor or subcontractor would have to include the name and address of the custodian of records and agent for service of process in Michigan.)
- A statement of whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or other specified legal entity.
- The name and address of each person with a financial interest in the contractor or subcontractor, or, if the contractor or subcontractor is a publicly traded corporation, the name and address of each officer of the corporation.
- Tax identification number.
- Unemployment insurance identification number.
- A statement that the contractor or subcontractor is in compliance with all applicable laws.
- Documentation that shows (as determined by LEO) that the contractor or subcontractor is in compliance with all applicable laws.

- An application fee, in an amount to be determined by LEO to sufficiently pay for implementation of the act. (LEO could allow an applicant to pay a prorated fee based on the date the application is submitted.)

Contractors and subcontractors would be prohibited from submitting an application that knowingly contains a false statement.

Within 15 business days after receiving an application, LEO would have to either grant the registration to an eligible applicant or deny an application and provide a written statement explaining the reason for the denial.

Contractors would be required to include a copy of their registration and each selected subcontractor's registration in a bid for a public construction project or an energy facility project.

If a rule is promulgated and in effect that establishes procedures for suspending or revoking a registration, LEO could do so upon determining that a contractor or subcontractor significantly or repeatedly violated the act or another law.

Certified payroll database

The act requires contractors and subcontractors working on a state project to maintain certain records, including certified payroll records, for at least three years. For the first year after the bill takes effect, Senate Bill 571 would require contractors and subcontractors to transmit those certified payroll records to the applicable contracting agent within ten days after the end of a pay period. The contracting agent would then have to transmit the record to LEO (on a form and in a manner prescribed by LEO) within ten days of receiving it.

After the first year, the payroll records would be transmitted to an internal "certified payroll database" to be created and maintained by LEO that allows a contractor, subcontractor, or contracting agent to upload certified payroll records. The database would have to include the following information for each construction mechanic:

- Classification.
- Whether the construction mechanic is an apprentice, journeyman, or other skill level.
- Gross wages paid in the pay period.
- Number of hours worked each day and starting and ending times of each day.
- Hourly wage rate, hourly overtime rate, and hourly fringe benefit rate.

A contractor or subcontractor would be prohibited from knowingly submitting a payroll record that contains a false statement. The database would have to require a contractor or subcontractor to attest via electronic signature at the time of submission that the certified payroll record is complete and accurate, the wage and fringe benefit rates paid comply with the act's prevailing wage requirements, the person submitting the payroll record has reviewed it, and the person submitting the record understands that a violation could result in the revocation, suspension, or denial of a state project registration.

The database could not display or otherwise include a construction mechanic's home address, telephone number, or social security number.

A contractor or subcontractor would not be required to submit certified payroll records if it performs work on a state project and is otherwise required to transmit those records to the Michigan Department of Transportation, or if it performs work on an energy facility project that is solely routine maintenance and repair.

Payroll records would have to be transmitted no later than ten days after the end of a pay period, and by the sixteenth day of each month, LEO would have to update the database with the certified payroll records from the immediately preceding month.

Prevailing Wage Fund

The bill would create the Prevailing Wage Fund in the Department of Treasury. The fund would receive money from fees or fines imposed under the act, interest and earnings from the fund's investments, and money and other assets from any source. The state treasurer would be responsible for directing the fund's investments. Money in the fund at the close of a fiscal year would remain in the fund and would not lapse to the general fund. LEO could expend money from the fund upon appropriation only to implement the act and would be considered the administrator of the fund for auditing purposes.

MCL 408.1101 et seq.

BACKGROUND:

A package of energy-related bills was signed into law in December 2023 that, among other things, allows the Michigan Public Service Commission (MPSC) to approve permits for certain wind power, solar power, and energy storage facilities.² One of the determinations that the MPSC must make in evaluating an application for the construction of such a facility is that the workers employed for the construction or construction maintenance of the facility are paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed as determined under 2023 PA 10 or the federal Davis-Bacon Act,³ whichever provides the higher wage and fringe benefit rates.

BRIEF DISCUSSION:

According to committee testimony, Senate Bill 571 intends to codify the wind and solar energy prevailing wage requirements from 2023 PAs 229 to 235 in Michigan's prevailing wage law, which supporters argue would empower LEO to enforce those requirements for clean energy projects. Supporters also argue that the bill would strengthen enforcement of current prevailing wage requirements by allowing LEO's Wage and Hour Division to use the revenue collected from registration fees to hire staff dedicated to enforcement.

² See Public Acts 229 to 235 of 2023, specifically PA 233 (HB 5120):

<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-5120> and PA 231 (SB 502):

<https://legislature.mi.gov/Bills/Bill?ObjectName=2023-SB-0502>. PA 233 applies to solar energy facilities with a nameplate capacity of at least 50 megawatts, wind energy facilities with a nameplate capacity with a nameplate capacity of at least 100 megawatts, and energy storage facilities with a nameplate capacity of at least 50 megawatts and an energy discharge capability of at least 200 megawatt hours.

³ See: <https://www.law.cornell.edu/uscode/text/40/subtitle-II/part-A/chapter-31/subchapter-IV>. The act establishes prevailing wage requirements, determined by the U.S. Department of Labor, for any contract in excess of \$2,000 to which the federal government is a party for the construction, alteration, or repair of public buildings or public works.

Additionally, supporters suggest that payroll record submission would relieve administrative burdens for contractors, since they would no longer have to maintain records for three years. They argue that record submission is a common practice in several other states, including those that do not have a state-level prevailing wage policy, in order to facilitate compliance with federal Davis-Bacon requirements.

However, concerns were raised during committee testimony that that subjecting businesses to prevailing wage requirements for private wind and solar projects would be problematic when those requirements were meant to apply to public construction projects.

FISCAL IMPACT:

Senate Bill 571 would have significant implications for revenues and expenditures within the Department of Labor and Economic Opportunity. LEO anticipates that staffing and information technology costs would be incurred on both a one-time and an ongoing basis. LEO's current estimates include approximately \$4.0 million in one-time costs and an annual ongoing cost of approximately \$1.1 million. The bill would allow LEO to assess a state project registration fee at an amount sufficient to implement the act; therefore, the ongoing net fiscal impact of the bill is likely to be neutral. However, the department indicated that one-time funding may be necessary to implement the requirements of the bill.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-13-24):

- Department of Labor and Economic Opportunity
- IBEW Michigan State Conference
- Michigan Laborers District Council

The following entities indicated support for the bill:

- Consumers Energy (6-13-24)
- Dimension Energy (6-20-24)
- DTE Energy (6-13-24)
- Michigan Regional Council of Carpenters and Millwrights (6-13-24)
- Summit Ridge Energy (6-20-24)
- United Food and Commercial Workers Local 876 (6-13-24)

The following entities indicated opposition to the bill (6-13-24):

- Associated Builders and Contractors of Michigan
- Mackinac Center for Public Policy
- National Federation of Independent Business
- Small Business Association of Michigan

Legislative Analyst: Holly Kuhn
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.