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Senate Bill 571 (as enacted)  
Sponsor: Senator John Cherry  
Senate Committee: Labor  
House Committee: Labor

**PUBLIC ACT 110 of 2024**

Date Completed: 9-10-24

## **RATIONALE**

According to testimony before the Senate Committee on Labor, prevailing wage provisions generally provide construction workers with more competitive wages and increase the quality of the work done on projects. Some people believe that paying contractors and subcontractors prevailing wages on renewable energy projects will improve the quality of these projects as the State expands its renewable energy portfolio. The bill requires prevailing wage for renewable energy projects and ensures that the Department of Labor and Economic Opportunity (LEO) has the authority to enforce the requirement.

## **CONTENT**

**The bill amends Public Act 10 of 2023, which requires prevailing wages and fringe benefits on State projects, to do the following:**

- **Expand the scope of State projects to include solar, wind, and energy storage projects with nameplate capacities of two megawatts or more.**
- **Require LEO to implement a State project registration system for contractors and subcontractors.**
- **Require contractors and subcontractors bidding or working on State projects to have a State project registration.**
- **Prescribe requirements for contractor and subcontractor payroll records.**
- **Require LEO to create and maintain a certified payroll database.**
- **Create the Prevailing Wage Fund in the State Treasury.**

The bill will take effect 91 days after the Legislature adjourns sine die.

### Scope of State Projects

The Act requires contracts for a State project involving construction between a contracting agent and a successful bidder as contractor to contain an express term that the rates of wages and fringe benefits to be paid to each class of construction workers by the bidder and all of its subcontractors must not be less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed.

Currently, the Act defines "State project" as construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a contracting agent. Instead, under the bill, "State project" means one of the following:

- New construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools,

works, bridges, highways, or roads that is either authorized by a public contracting agent or is sponsored or financed in whole or in part by the State.

-- An energy facility project.

"Energy facility project" means new construction, completion, demolition, major alteration, or repowering of an energy facility. "Energy facility" will mean an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than one parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

"Energy storage facility" means a system that absorbs, stores, and discharges electricity with a nameplate capacity of two megawatts or more. Energy storage facility does not include either of the following:

- Fossil fuel storage.
- Power-to-gas storage that directly uses fossil fuel inputs.

"Nameplate capacity" means the designed full-load sustained generating output of an energy facility. Nameplate capacity must be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

"Solar energy facility" means a system that captures and converts solar energy into electricity, with a nameplate capacity of two megawatts or more, for the purpose of sale or for use in locations other than solely the solar energy facility property. The term includes the following equipment and facilities to be constructed by an electric provider or independent power producer: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations generation tie lines; solar monitoring stations; and accessory equipment and structures.

"Wind energy facility" means a system that captures and converts wind energy into electricity, with a nameplate capacity of two megawatts or more, for the purpose of sale or for use in locations other than solely the wind energy facility property. The term includes the following equipment and facilities to be constructed by an electric provider or independent power producer: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

Additionally, the bill modifies the definition of "contracting agent". The term 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 the bill, the term means a private contracting agent or a public contracting agent.

"Private contracting agent" means 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.

"Public contracting agent" means an officer, school board, board or commission of Michigan, or State institution supported in whole or in part by funds from the State, authorized to enter into a contract for a State project or to perform a State project by the direct employment of labor.

#### State Project Registration Requirements for Contractors

The bill creates a State project registration for contractors and subcontractors under the Act. Generally, a contractor or subcontractor may not bid for a State project or perform work on a State project unless the contractor or subcontractor holds a State project registration (see Contractor Activity Requiring a Registration below).

To obtain a State project registration or renew a State project registration, a contractor or subcontractor must do the following:

- Submit an application that meets the requirements listed below to LEO on a form and in a manner as prescribed by LEO.
- Pay the application fee as determined by LEO.

An application for a State project registration must include all the following:

- A statement that the contractor or subcontractor follows all applicable laws.
- Documentation that shows, as determined by LEO, that the contractor or subcontractor follows all applicable laws, including holding every license, registration, certificate, or other similar authorization required by law.
- Any other information or documentation as required by LEO.

In addition to the information above, an application for a State project registration must include all the following information for the contractor or subcontractor:

- Name.
- Address of its principal place of business or, if this address is not in Michigan, the name and address of the custodian of records and agent for service of process in Michigan.
- Telephone number.
- Whether the contractor or subcontractor is a corporation, partnership, sole proprietorship, or, if a different type of legal entity, the type of 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 State project registration is valid for one year. The Department must establish an annual renewal date for all State project registrations. The Department must establish a State project registration application fee in an amount that is sufficient to implement the bill's requirements. The Department may allow an applicant for a State project registration to pay a prorated application fee based on the date that the applicant submits the applicant's application.

Within 15 business days after LEO receives a complete application and application fee for a State project registration, LEO must do one of the following:

- If the applicant meets the requirements for a State project registration, grant the State project registration to the applicant.

- If the applicant does not meet the requirements of a State project registration, deny the application and provide the applicant with a written statement that includes the reason for the denial.

A contractor or subcontractor may not submit an application for a State project registration if the contractor or subcontractor knows that the application contains a false statement.

The Department may suspend or revoke a contractor's or subcontractor's State project registration if all the following conditions are met:

- The Department determines that the contractor or subcontractor significantly or repeatedly violate the Act or another law.
- The Department has promulgated a rule that establishes procedures for suspending or revoking a contractor's or subcontractor's State project registration.
- The rule described above is in effect.

#### Contractor Activity Requiring a Registration

Under the bill, a contractor may not do any of the following:

- Submit a bid for a State project unless the contractor holds a State project registration.
- Perform work on a State project unless the contractor holds a State project registration.
- List a subcontractor on a bid proposal for a State project if the subcontractor does not hold a State project registration.
- Enter into an agreement with a subcontractor to perform work on a State project if the subcontractor does not hold a State project registration.

A subcontractor may not do either of the following unless the subcontractor holds a State project registration:

- Perform work on a State project.
- Enter into an agreement with a contractor to perform work on a State project.

A contractor must include in a bid for a State project a copy of the State project registration for the contractor and for each subcontractor of the contractor that has been selected at the time the contractor submits the bid.

#### Contractor Payroll Requirements

Currently, contracting agents, contractors, and subcontractors must maintain certified payroll records and other records required under the Act for a minimum of three years. Under the bill, within 10 days of the end of a pay period, a contractor or subcontractor must transmit the certified payroll records for the pay period to the following:

- Before one year after the bill's effective date, the applicable contracting agent.
- On or after the date one year after the bill's effective date, the database described below.

By one year after the bill's effective date, LEO must create and maintain an internal certified payroll database that meets all the following conditions:

- Allows a contractor, subcontractor, or contracting agent to submit certified payroll records to the database via the internet.
- Does not display or otherwise include a construction mechanic's home address, telephone number, or Social Security number.

In addition, the database must include all 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.
- Starting and ending times of each day.
- Hourly wage rate.
- Hourly overtime wage rate.
- Hourly fringe benefit rate.

Finally, the database must require a contractor or subcontractor to attest at the time the contractor or subcontractor submits the certified payroll record, via electronic signature, that all the following are true:

- The certified payroll record is complete and accurate.
- The wage and fringe benefit rates paid to the construction mechanic are not less than the rates required under the Act.
- The person submitting the certified payroll record has reviewed the certified payroll record.
- The person submitting the certified payroll record understands that a violation of the bill may result in either the revocation or suspension of a State project registration or the denial of an application for a State project registration.

A contracting agent that receives a certified payroll record must transmit the certified payroll record to LEO on a form and in a manner as prescribed by LEO within 10 days of receiving the certified payroll record.

By the sixteenth day of each month, LEO must update the database with the certified payroll records from the immediately preceding month.

A contractor or subcontractor must not submit a certified payroll record if the contractor or subcontractor knows that the certified payroll record contains a false statement.

A contractor or subcontractor will not have to transmit certified payroll records if either of the following conditions apply:

- The contractor or subcontractor performs work on a State project and is otherwise required by law to transmit certified payroll records to the Department of Transportation.
- The contractor or subcontractor performs work on an energy facility project that is solely routine maintenance or repair.

#### Prevailing Wage Fund

The bill creates the Prevailing Wage Fund in the State Treasury. The State Treasurer must deposit money and other assets received from fees or fines imposed under the Act or from any other source in the Fund. The State Treasurer must direct the investment of money in the Fund, credit interest, and earnings from the investments to the Fund. Money in the Fund at the close of the fiscal year does not lapse to the General Fund.

The Department is the administrator of the Prevailing Wage Fund for audits and must spend money from the Fund on appropriation only to implement the Act.

MCL 408.1101 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Since February 13, 2024, prevailing wage has been required on State-funded construction projects in Michigan; however, laws are often not followed if they are not enforced. According to testimony before the Senate Committee on Labor, before Michigan's former prevailing wage law was repealed on June 6, 2018, there was no regular mechanism used to investigate if contractors were paying prevailing wages. Reportedly, the most reliable way to get the State to investigate a contractor who was not paying prevailing wage was to privately report them. Testimony before the House Committee on Labor also indicated that contractors withholding payment of wages or fringe benefits is common in the construction industry. Requiring contractors and subcontractors to submit certified payroll records will establish a regular enforcement mechanism that will ensure contractors are paying prevailing wage and reduce the likelihood of non-payment of wages or fringe benefits.

### **Supporting Argument**

The payroll record submission process builds off standards already in place. Many contractors and subcontractors who work on Federally financed projects are already familiar with the certified payroll submission standards, which are present in the Davis-Bacon Act. The Davis-Bacon Act is Federal law that requires the United States Department of Labor to determine a local prevailing wage, issue regulations and standards that award or fund projects subject to prevailing wage, and oversee enforcement of the Act.<sup>1</sup> Similarly, Michigan's previous prevailing wage law required contractors and subcontractors to keep certified payroll; however, these records were only required to be submitted if LEO requested them. The only difference between the bill's system and the system in Michigan's old prevailing wage law is that contractors and subcontractors must routinely submit certified payroll to a centralized database. Many contractors and subcontractors are already familiar with payroll requirements under Davis-Bacon and former State law and requiring submission of certified payroll to LEO for contractors and subcontractors will be a similar process.

### **Supporting Argument**

According to testimony before the Senate Committee on Labor, increasing the scope of construction projects required to use prevailing wage will benefit State construction. Reportedly, studies show that requiring prevailing wages on construction projects does not increase the overall cost. This is because higher-paid and higher-skilled workers have a lower rate of overruns, delays, and change orders. Although prevailing wage jobs have fewer bids compared to jobs bid without prevailing wage requirements, the final construction cost of jobs bid with prevailing wage requirements statistically remains the same. Testimony also indicated that instituting prevailing wage requirements increases the likelihood that Michigan workers work on Michigan construction projects, increasing wages for Michigan residents. Lastly, by requiring prevailing wage to be paid to construction workers, it removes the incentive for contractors to underbid jobs by decreasing wages and hiring a low-skilled workforce, which should not be the basis for an advantage in the construction industry.

**Response:** Empirical evidence demonstrates that conventional prevailing wage laws artificially increase governmental costs of providing services and assets. Between 2004 and 2019, prevailing wage laws raised the quality-adjusted cost of providing roads and road-maintenance by 8.5% to 14.3%.<sup>2</sup> Prevailing wage laws represent an inefficiency in taxpayer dollars and a disadvantage to laborers who would have benefitted had they received wages for the project.

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<sup>1</sup> Wage and Hour Division, United States Department of Labor, "Davis-Bacon and Related Acts", 2024.

<sup>2</sup> Hicks, Michael, J., Mackinac Center for Public Policy, "The Costs of Prevailing Wage: Evidence from State Spending on Road Construction", 2023.

The bill also expands prevailing wage laws to energy facility projects that are not State-funded. According to testimony before the Senate Committee on Labor, this will manufacture a higher minimum wage in the construction industry for energy facility projects that are not underwritten by the State. Since prevailing wage harms taxpayers and merchants by artificially inflating the cost of construction, the bill will hurt Michigan residents.

### **Opposing Argument**

Unions inherently benefit from prevailing wage laws because they can provide more competitive bids. Prevailing wage laws, therefore, take money away from taxpayers and merchants to pay unions and union workers. These policies also deprive non-union laborers of work that they may have otherwise received in a market without prevailing wage laws. Prevailing wage laws represent an unfair policy of pro-unionization from the State.

Legislative Analyst: Alex Krabill

### **FISCAL IMPACT**

The bill will increase costs to LEO and have no fiscal impact on local units of government. The bill requires that LEO collect and approve State project registration applications and maintain payroll records for contracting agents. This includes additional staff and information technology costs for one-time and ongoing operations.

The bill will have no significant fiscal impact on the Department of Treasury. Based on the level of estimated revenue likely to be deposited into the Fund, the ongoing costs associated with administering and investing the Fund are less than \$100 and are within current appropriations.

Fiscal Analyst: Elizabeth Raczkowski  
Cory Savino, PhD

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.