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Senate Bill 571 (Substitute S-2 as passed by the Senate)
Sponsor: Senator John Cherry
Committee: Labor

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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 would improve the quality of these projects as the State expands its renewable energy portfolio. The bill would require prevailing wage for renewable energy projects and ensure that the Department of Labor and Economic Opportunity (LEO) had the authority to enforce the requirement.

CONTENT

The bill would amend 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.**

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" would mean 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" would mean new construction, completion, demolition, major alteration, or repowering of an energy facility. "Energy facility" would 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" would mean 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" would mean the designed full-load sustained generating output of an energy facility. Nameplate capacity shall 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" would mean 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 would include 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" would mean 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 would include 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 would modify 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 would mean a private contracting agent or a public contracting agent.

"Private contracting agent" would mean 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" would mean 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 would create a State project registration for contractors and subcontractors under the Act. Generally, a contractor or subcontractor could not bid for a State project or perform work on a State project unless the contractor or subcontractor held 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 would have to do the following:

- Submit an application that met 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 would have to include all the following:

- A statement that the contractor or subcontractor followed all applicable laws.
- Documentation that showed, as determined by LEO, that the contractor or subcontractor followed 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 would have to include all the following information for the contractor or subcontractor:

- Name.
- Address of its principal place of business or, if this address were 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 was 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 were 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 would be valid for one year. The Department would have to establish an annual renewal date for all State project registrations. The Department would have to establish a State project registration application fee in an amount that was sufficient to implement the bill's requirements. The Department could allow an applicant for a State project registration to pay a prorated application fee based on the date that the applicant submitted the applicant's application.

Within 15 business days after LEO received a complete application and application fee for a State project registration, LEO would have to do one of the following:

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

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

A contractor or subcontractor could not submit an application for a State project registration if the contractor or subcontractor knew that the application contained a false statement.

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

- The Department determined that the contractor or subcontractor significantly or repeatedly violated the Act or another law.
- The Department had promulgated a rule that established procedures for suspending or revoking a contractor's or subcontractor's State project registration.
- The rule described above was in effect.

Contractor Activity Requiring a Registration

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

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

A subcontractor could not do either of the following unless the subcontractor held 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 would have to 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.

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 would have to 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 would have to create and maintain an internal certified payroll database that met all the following conditions:

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

In addition, the database would have to include all the following information for each construction mechanic:

- Classification.
- Whether the construction mechanic was 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 would have to require a contractor or subcontractor to attest at the time the contractor or subcontractor submitted the certified payroll record, via electronic signature, that all the following were true:

- The certified payroll record was complete and accurate.
- The wage and fringe benefit rates paid to the construction mechanic were not less than the rates required under the Act.
- The person submitting the certified payroll record had reviewed the certified payroll record.
- The person submitting the certified payroll record understood that a violation of the bill could 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 received a certified payroll record would have to 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 would have to update the database with the certified payroll records from the immediately preceding month.

A contractor or subcontractor could not submit a certified payroll record if the contractor or subcontractor knew that the certified payroll record contained a false statement.

A contractor or subcontractor would not be required to transmit certified payroll records if either of the following conditions applied:

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

Prevailing Wage Fund

The bill would create the Prevailing Wage Fund in the State Treasury. The State Treasurer would have to 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 would have to 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 would not lapse to the General Fund.

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

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. The bill would establish a regular enforcement mechanism that did not exist in the State's previous prevailing wage law to ensure that contractors and subcontractors were paying prevailing wage.

Supporting Argument

According to testimony before the Senate Committee on Labor, increasing the scope of construction projects required to use prevailing wage would benefit State construction. Reportedly, studies show that requiring prevailing wages on construction projects does not increase the overall cost. 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 indicates 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.

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%.¹ Prevailing wage laws represent an inefficiency in taxpayer dollars and also a disadvantage to laborers who would have benefitted had they received wages for the project.

The bill also would expand prevailing wage laws to energy facility projects that were not State-funded. According to testimony before the Senate Committee on Labor, this would mandate a higher minimum wage on the construction industry for energy facility projects that were not underwritten by the State. Since prevailing wage harms taxpayers and merchants by artificially inflating the cost of construction, the bill would 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.

¹ Hicks, Michael, J., Mackinac Center for Public Policy, "The Costs of Prevailing Wage: Evidence from State Spending on Road Construction", 2023.

FISCAL IMPACT

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

The bill would 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.

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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.