

A New Hitch for Solar: SRECs Trigger the Prevailing Wage Rate

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On Monday, July 23, 2012, Governor Christie signed into law S1925/A2966. Although the new law's primary objective is to provide stability to the solar market by increasing the solar renewable portfolio standard, the new law also includes a provision that will require certain solar developers to pay construction workers the prevailing wage rate. The law takes effect immediately.

Generally, the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., establishes a prevailing wage and benefit rate for certain workers on public works projects. The prevailing wage rate is based on the collective bargaining agreements established for a particular craft or trade in the locality in which the public work is performed and revised at least annually. In New Jersey, these rates vary by county and by the type of work performed. Public works projects typically subject to the New Jersey Prevailing Wage Act are those projects funded in whole or in part with funds from a public body.

On July 15, 2009, L. 2009, c. 89, codified at N.J.S.A. 48:2-29.47, required construction projects receiving financial assistance from the Board of Public Utilities ("BPU") to pay construction workers at the prevailing wage rate. At that time, the law was drafted so that the prevailing wage requirement did not take effect until the Board adopted rules and regulations to implement the legislation. The BPU promptly took action to propose rules, 42 N.J.R. 49, implementing the legislation and providing needed clarification to the definition of financial assistance. Notably, the BPU's proposed regulations clarified the phrase financial assistance from the BPU. The clarification stated that financial assistance did not include solar renewable energy certificates ("SRECs"), because SRECs are provided as an incentive for electric generation--not the construction of solar projects. As a result, projects funded exclusively with SRECs were not required to pay construction workers the prevailing wage rate. On January 14, 2010, Governor Corzine signed L. 2009, c. 203, which amended N.J.S.A. 48:2-29.47 to remove any reference to BPU regulations. As a result, the BPU's regulations were never adopted; however, the BPU's interpretation that SRECs were not financial assistance had endured until now. This new legislation changes that interpretation.

Section two of the bill amends N.J.S.A. 48:3-87 to include a new subsection (v), which states that the issuance of SRECs for any solar project connected to the distribution system with a capacity of one megawatt or more will be deemed financial assistance from the BPU. By classifying the issuance of SRECs to these projects as "financial assistance" the new law subjects them to the requirements of N.J.S.A. 48:2-29.47. As a result, construction workers on solar projects of one megawatt or more that are funded with SRECs must be paid prevailing wages and benefits. The legislation appears to exempt projects smaller than one megawatt, but there is some ambiguity to the statutory language that will ultimately require clarification from either the Board of Public Utilities or the Commissioner of Labor and Workforce Development.