

Senator Derek L. Kitchen proposes the following substitute bill:

STATE PREVAILING WAGE REQUIREMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek L. Kitchen

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions relating to a prevailing wage on state construction projects.

Highlighted Provisions:

This bill:

- ▶ requires workers on a state construction project to be paid a prevailing wage;
- ▶ provides for the determination of a prevailing wage;
- ▶ authorizes the Division of Antidiscrimination and Labor to investigate alleged violations and issue a determination and order;
- ▶ creates a criminal penalty and provides for a civil action for a violation of the prevailing wage requirements; and
- ▶ requires a bid issued by a procurement unit and a contract resulting from a bid to comply with the prevailing wage requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 [63G-6a-602](#), as last amended by Laws of Utah 2020, Chapter 257

27 [63G-6a-603](#), as last amended by Laws of Utah 2020, Chapter 257

28 ENACTS:

29 [34-56-101](#), Utah Code Annotated 1953

30 [34-56-201](#), Utah Code Annotated 1953

31 [34-56-202](#), Utah Code Annotated 1953

32 [34-56-203](#), Utah Code Annotated 1953

33 [34-56-301](#), Utah Code Annotated 1953

34 [34-56-302](#), Utah Code Annotated 1953

35 [34-56-303](#), Utah Code Annotated 1953

36 [34-56-401](#), Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section [34-56-101](#) is enacted to read:

40 **CHAPTER 56. PREVAILING WAGES ON STATE CONSTRUCTION PROJECTS**

41 **Part 1. General Provisions**

42 **[34-56-101](#). Definitions.**

43 As used in this chapter:

44 (1) "Construction project" means a project:

45 (a) undertaken by or for a state entity;

46 (b) for construction, reconstruction, improvement, enlargement, alteration, or repair of

47 a public improvement; and

48 (c) estimated to cost \$100,000 or more.

49 (2) "Director" means the director of the division.

50 (3) "Division" means the Division of Antidiscrimination and Labor created in Section

51 [34A-1-202](#).

52 (4) (a) "Prevailing wage" means the wage that is:

53 (i) determined by the United States Department of Labor; and

54 (ii) generally paid to a worker engaged in similar work.

55 (b) "Prevailing wage" includes a benefit that is:

56 (i) determined by the United States Department of Labor; and

57 (ii) customarily provided to or paid on behalf of a worker engaged in similar work.

58 (5) "State entity" means the state or any department, division, agency, board,

59 commission, or other instrumentality of the state.

60 (6) "Worker" means an individual who:

61 (a) is employed by:

62 (i) a state entity; or

63 (ii) a contractor or subcontractor on a construction project for the state entity; and

64 (b) is employed to perform actual construction project work on the site of a

65 construction project.

66 Section 2. Section **34-56-201** is enacted to read:

67 **Part 2. Prevailing Wage Requirements**

68 **34-56-201. Payment of prevailing wage required -- Exception.**

69 (1) (a) Except as provided in Subsection (2), a state entity shall:

70 (i) pay a worker no less than the prevailing wage for work of a similar character in the

71 locality in which the work is performed; and

72 (ii) ensure that a contract for a construction project requires:

73 (A) each worker to be paid the prevailing wage for work of a similar character in the

74 locality in which the work is performed; and

75 (B) each contractor and subcontractor on the construction project to comply with the

76 requirements of this chapter.

77 (b) For purposes of this chapter, an individual who transports material or equipment to

78 a construction project site is considered to be a worker if:

79 (i) the transporting of material or equipment is included in a phase of the construction

80 project; and

81 (ii) the actual work that the individual performs on the construction project site is more

82 than incidental to the individual's duties of transporting material or equipment.

83 (2) (a) Subsection (1)(a) does not apply with respect to an individual who is employed

84 pursuant to and is registered in a training or apprenticeship program approved by the United

85 States Department of Labor Office of Apprenticeship.

86 (b) Notwithstanding Subsection (2)(a), a state entity shall:

87 (i) pay an individual described in Subsection (2)(a) according to the applicable

88 apprenticeship standards and guidelines, but no less than 60% of a journeyperson's wage and
89 benefits; and

90 (ii) ensure that a contract for a construction project requires each individual described
91 in Subsection (2)(a) to be paid according to the applicable apprenticeship standards and
92 guidelines, but no less than 60% of a journeyperson's wage and benefits.

93 Section 3. Section **34-56-202** is enacted to read:

94 **34-56-202. Prevailing wage determination.**

95 (1) Before awarding a contract for a construction project, a state entity shall:

96 (a) obtain from the United States Department of Labor the prevailing wage for each
97 craft or type of work:

98 (i) needed to perform the contract; and

99 (ii) within the locality in which the construction project will take place; and

100 (b) make a determination of the prevailing wage for each craft or type of work
101 described in Subsection (1)(a) based on the prevailing wage information obtained under
102 Subsection (1)(a).

103 (2) A state entity's determination under Subsection (1) is final for all purposes of the
104 contract for which the determination is made.

105 Section 4. Section **34-56-203** is enacted to read:

106 **34-56-203. Records.**

107 (1) Each contractor and subcontractor on a construction project shall:

108 (a) maintain an accurate record with respect to each worker employed by the contractor
109 or subcontractor for the construction project, including:

110 (i) the worker's name and occupation or classification; and

111 (ii) the actual wages paid to the worker; and

112 (b) make the record described in Subsection (1)(a) available for inspection at all
113 reasonable hours by the division or the state entity.

114 (2) A record under Subsection (1) is a public record subject to Title 63G, Chapter 2,
115 Government Records Access and Management Act.

116 Section 5. Section **34-56-301** is enacted to read:

117 **Part 3. Enforcement**

118 **34-56-301. Procedure for aggrieved person to file claim -- Adjudicative**

119 **proceedings -- Determination and order -- Rulemaking.**

120 (1) The division shall conduct an adjudicative proceeding in accordance with Title
121 63G, Chapter 4, Administrative Procedures Act.

122 (2) (a) A worker claiming to be aggrieved by an action of a contractor or subcontractor
123 in violation of this chapter may file with the division a request for agency action.

124 (b) A worker shall file request for agency action described in Subsection (2)(a) within
125 180 days after the alleged violation occurs.

126 (3) (a) On receipt of a request for agency action described in Subsection (2)(a), the
127 division shall conduct an investigation into the alleged violation,

128 (b) An investigator shall make a prompt impartial investigation of each allegation
129 made in the request for agency action.

130 (4) If the investigator into an alleged violation uncovers sufficient evidence to support
131 the allegation set out in the request for agency action:

132 (a) the investigator shall formally report these findings to the director or the director's
133 designee; and

134 (b) the director may issue a determination and order:

135 (i) directing the violator to cease any prohibited practice; and

136 (ii) imposing a civil penalty on the violator in the amount of \$500 for each violation.

137 (5) The division shall deposit the money that the division receives under Subsection
138 (4)(b) into the General Fund as a dedicated credit to the division to pay for the costs of
139 administering this chapter.

140 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
141 commission shall adopt rules, as required, to implement this section.

142 Section 6. Section **34-56-302** is enacted to read:

143 **34-56-302. Criminal penalty.**

144 (1) A worker may refer an alleged violation of this chapter to the attorney general or
145 county attorney.

146 (2) A person found by a court of competent jurisdiction to have willfully violated or
147 failed to comply with a provision of this chapter is guilty of a class B misdemeanor.

148 Section 7. Section **34-56-303** is enacted to read:

149 **34-56-303. Civil action.**

150 (1) In addition to the administrative action authorized under Section 34-56-301 and the
151 criminal penalty authorized under Section 34-56-302, a worker may bring a civil action to
152 enforce the employee's right to a prevailing wage as described in this chapter.

153 (2) A worker who is paid less than the prevailing wage for work performed on a
154 construction project may bring a civil action:

155 (a) for injunctive relief; and

156 (b) to recover the difference between the prevailing wage and what the worker was
157 actually paid.

158 (3) A court shall award attorney fees and costs to a worker who prevails in an action
159 brought under Subsection (2).

160 Section 8. Section **34-56-401** is enacted to read:

161 **Part 4. Scope**

162 **34-56-401. Limits on applicability of chapter.**

163 A requirement of this chapter does not apply:

164 (1) to the extent the requirement conflicts with a federal law, rule, or regulation; or

165 (2) to work performed by an inmate at a correctional facility.

166 Section 9. Section **63G-6a-602** is amended to read:

167 **63G-6a-602. Contracts awarded by bidding.**

168 (1) A procurement unit may award a contract for a procurement item by the bidding
169 process, in accordance with the rules of the rulemaking authority.

170 (2) Before awarding a contract under this part, a procurement unit shall comply with
171 Section 34-56-202.

172 (3) A contract awarded using the bidding process shall:

173 (a) be in compliance with the requirements of Title 34, Chapter 56, Prevailing Wages
174 on State Construction Projects; and

175 (b) require each contractor and subcontractor under the contract to comply with the
176 requirements of Title 34, Chapter 56, Prevailing Wages on State Construction Projects.

177 Section 10. Section **63G-6a-603** is amended to read:

178 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

179 (1) A procurement unit that intends to award a contract for a procurement item using
180 the bidding process shall issue an invitation for bids.

- 181 (2) A procurement unit shall include in an invitation for bids:
- 182 (a) a description of the procurement item that the procurement unit seeks;
- 183 (b) instructions for submitting a bid, including the deadline for submitting a bid;
- 184 (c) the objective criteria that the procurement unit will use to evaluate bids;
- 185 (d) information about the time and manner of opening bids; [~~and~~]
- 186 (e) terms and conditions that the procurement unit intends to include in a contract
- 187 resulting from the bidding process, including the requirement to comply with Title 34, Chapter
- 188 56, Prevailing Wages on State Construction Projects; and
- 189 (f) the prevailing wage, as defined in Section 34-56-101, in the locality where the
- 190 construction project will take place for each craft and type of work needed to execute the
- 191 contract.
- 192 (3) A procurement unit shall publish an invitation for bids in accordance with the
- 193 requirements of Section 63G-6a-112.