

SB0129S01 compared with SB0129

~~{deleted text}~~ shows text that was in SB0129 but was deleted in SB0129S01.

inserted text shows text that was not in SB0129 but was inserted into SB0129S01.

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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~~{Commission}~~ to investigate~~{an}~~ alleged ~~{violation of the prevailing wage provisions}~~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

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comply with the prevailing wage requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-602, as last amended by Laws of Utah 2020, Chapter 257

63G-6a-603, as last amended by Laws of Utah 2020, Chapter 257

ENACTS:

34-56-101, Utah Code Annotated 1953

34-56-201, Utah Code Annotated 1953

34-56-202, Utah Code Annotated 1953

34-56-203, Utah Code Annotated 1953

~~{ **34-56-204**, Utah Code Annotated 1953~~

{ **34-56-301**, Utah Code Annotated 1953

34-56-302, Utah Code Annotated 1953

34-56-303, Utah Code Annotated 1953

34-56-401, Utah Code Annotated 1953

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

Section 1. Section **34-56-101** is enacted to read:

CHAPTER 56. PREVAILING WAGES ON STATE CONSTRUCTION PROJECTS

Part 1. General Provisions

34-56-101. Definitions.

As used in this chapter:

~~{ (1) "Commission" means the Labor Commission created in Section 34A-1-103.~~

{ (~~2~~1) "Construction project" means a project:

(a) undertaken by or for a state entity;

(b) for construction, reconstruction, improvement, enlargement, alteration, or repair of a public improvement; and

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

~~(3) "Labor commissioner" means the commission's chief administrative officer appointed under~~ (2) "Director" means the director of the division.

(3) "Division" means the Division of Antidiscrimination and Labor created in Section ~~{34A-1-201, or the chief administrative officer's designee}~~ 34A-1-202.

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

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

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

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

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

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

(5) "State entity" means the state or any department, division, agency, board, commission, or other instrumentality of the state.

(6) "Worker" means an individual who:

(a) is employed by:

(i) a state entity; or

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

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

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

Part 2. Prevailing Wage Requirements

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

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

(i) pay a worker no less than the prevailing wage for work of a similar character in the locality in which the work is performed; and

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

(A) each worker to be paid the prevailing wage for work of a similar character in the locality in which the work is performed; and

(B) each contractor and subcontractor on the construction project to comply with the requirements of this chapter.

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

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

(i) the transporting of material or equipment is included in a phase of the construction project; and

(ii) the actual work that the individual performs on the construction project site is more than incidental to the individual's duties of transporting material or equipment.

(2) (a) Subsection (1)(a) does not apply with respect to an individual who is employed pursuant to and is registered in a training or apprenticeship program approved by the United States Department of Labor Office of Apprenticeship.

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

(i) pay an individual described in Subsection (2)(a) according to the applicable apprenticeship standards and guidelines, but no less than 60% of a journeyperson's wage and benefits; and

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

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

34-56-202. Prevailing wage determination.

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

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

(i) needed to perform the contract; and

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

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

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

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

~~{ **34-56-203. Commission to determine prevailing wages.**~~

~~Using the most recent United States Department of Labor wage determinations, the commission shall annually determine the prevailing wage within the state for all occupations.~~

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crafts, and types of work expected to be required for construction projects:

~~Section 5. Section 34-56-204 is enacted to read:~~

† ~~34-56-204~~ **34-56-203. Records.**

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

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

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

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

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

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

Section ~~6~~ **5**. Section **34-56-301** is enacted to read:

Part 3. Enforcement

34-56-301. ~~Commission investigation of alleged violation~~ **Procedure for aggrieved person to file claim -- Adjudicative proceedings -- ~~Civil penalty.~~**

~~(1) The commission shall investigate a contractor or subcontractor's alleged violation of a provision of this chapter if the commission:~~

~~(a) receives a complaint alleging a violation of this chapter; or~~

~~(b) has reason to believe that a violation of this chapter has occurred.~~

~~(2) If a commission investigation under Subsection (1) indicates a probable violation of a provision of this chapter, the commission may~~ **Determination and order -- Rulemaking.**

(1) **The division shall** conduct an adjudicative proceeding ~~under Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to determine whether a violation occurred.~~

~~(3) The commission may impose a civil penalty on~~ **in accordance with Title 63G, Chapter 4, Administrative Procedures Act.**

(2) (a) **A worker claiming to be aggrieved by an action of** a contractor or subcontractor ~~found~~ **in** ~~an adjudicative proceeding to have violated a provision~~ **violation** of this chapter may file with the division a request for agency action.

(b) A worker shall file request for agency action described in Subsection (2)(a) within

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180 days after the alleged violation occurs.

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

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

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

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

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

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

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

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

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

Section ~~{7}~~6. Section **34-56-302** is enacted to read:

34-56-302. Criminal penalty.

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

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

Section ~~{8}~~7. Section **34-56-303** is enacted to read:

34-56-303. Civil action.

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

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

(a) for injunctive relief; and

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

(~~2~~3) A court shall award attorney fees and costs to a worker who prevails in an action brought under Subsection (~~1~~2).

Section ~~9~~8. Section **34-56-401** is enacted to read:

Part 4. Scope

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

A requirement of this chapter does not apply:

- (1) to the extent the requirement conflicts with a federal law, rule, or regulation; or
- (2) to work performed by an inmate at a correctional facility.

Section ~~10~~9. Section **63G-6a-602** is amended to read:

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

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

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

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

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

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

Section ~~11~~10. Section **63G-6a-603** is amended to read:

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

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

(2) A procurement unit shall include in an invitation for bids:

- (a) a description of the procurement item that the procurement unit seeks;
- (b) instructions for submitting a bid, including the deadline for submitting a bid;
- (c) the objective criteria that the procurement unit will use to evaluate bids;
- (d) information about the time and manner of opening bids; [~~and~~]
- (e) terms and conditions that the procurement unit intends to include in a contract

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resulting from the bidding process, including the requirement to comply with Title 34, Chapter 56, Prevailing Wages on State Construction Projects; and

(f) the prevailing wage, as defined in Section 34-56-101, in the locality where the construction project will take place for each craft and type of work needed to execute the contract.

(3) A procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-112.