

**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 Labor Commission to investigate an alleged violation of the prevailing wage provisions;
- ▶ 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:

**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



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 [34-56-204](#), Utah Code Annotated 1953

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

35 [34-56-302](#), Utah Code Annotated 1953

36 [34-56-303](#), Utah Code Annotated 1953

37 [34-56-401](#), Utah Code Annotated 1953

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

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

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

42 **Part 1. General Provisions**

43 **[34-56-101](#). Definitions.**

44 As used in this chapter:

45 (1) "Commission" means the Labor Commission created in Section [34A-1-103](#).

46 (2) "Construction project" means a project:

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

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

49 a public improvement; and

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

51 (3) "Labor commissioner" means the commission's chief administrative officer

52 appointed under Section [34A-1-201](#), or the chief administrative officer's designee.

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

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

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

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

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

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

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

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

62           (a) is employed by:

63           (i) a state entity; or

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

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

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

68   **Part 2. Prevailing Wage Requirements**

69           **34-56-201. Payment of prevailing wage required -- Exception.**

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

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

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

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

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

78           (b) For purposes of this chapter, an individual who transports material or equipment to  
79 a construction project site is considered to be a worker if:

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

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

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

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

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

90 benefits; and

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

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

95 **34-56-202. Prevailing wage determination.**

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

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

99 (i) needed to perform the contract; and

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

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

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

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

107 **34-56-203. Commission to determine prevailing wages.**

108 Using the most recent United States Department of Labor wage determinations, the  
109 commission shall annually determine the prevailing wage within the state for all occupations,  
110 crafts, and types of work expected to be required for construction projects.

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

112 **34-56-204. Records.**

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

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

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

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

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

120 (2) A record under Subsection (1) is a public record subject to Title 63G, Chapter 2,

121 Government Records Access and Management Act.

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

123 **Part 3. Enforcement**

124 **34-56-301. Commission investigation of alleged violation -- Adjudicative**  
125 **proceedings -- Civil penalty.**

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

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

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

130 (2) If a commission investigation under Subsection (1) indicates a probable violation of  
131 a provision of this chapter, the commission may conduct an adjudicative proceeding under  
132 Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to determine whether a violation  
133 occurred.

134 (3) The commission may impose a civil penalty on a contractor or subcontractor found  
135 in an adjudicative proceeding to have violated a provision of this chapter in the amount of \$500  
136 for each violation.

137 Section 7. Section **34-56-302** is enacted to read:

138 **34-56-302. Criminal penalty.**

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

141 Section 8. Section **34-56-303** is enacted to read:

142 **34-56-303. Civil action.**

143 (1) A worker who is paid less than the prevailing wage for work performed on a  
144 construction project may bring a civil action to recover the difference between the prevailing  
145 wage and what the worker was actually paid.

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

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

149 **Part 4. Scope**

150 **34-56-401. Limits on applicability of chapter.**

151 A requirement of this chapter does not apply:

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

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

155 **63G-6a-602. Contracts awarded by bidding.**

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

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

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

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

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

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

166 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

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

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

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

175 resulting from the bidding process, including the requirement to comply with Title 34, Chapter  
176 56, Prevailing Wages on State Construction Projects; and

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

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