

SENATE BILL No. 470

By Senator Sykes

2-9

1 AN ACT concerning labor and employment; requiring a prevailing wage
2 for state public works construction contracts by state agencies;
3 providing for the determination of prevailing wages by the secretary of
4 labor; assigning enforcement of compliance to the secretary of
5 administration and the attorney general; permitting assignment of
6 workers claims to the secretary of labor; providing for certain civil and
7 criminal penalties; permitting cities and counties to require a prevailing
8 wage; amending K.S.A. 2021 Supp. 12-16,131 and repealing the
9 existing section.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 New Section 1. For purposes of sections 1 through 9, and
13 amendments thereto:

14 (a) "Construction" means construction, reconstruction, improvement,
15 enlargement, alteration, remodeling, painting and decorating or major
16 repair. "Construction" does not include routine maintenance work.

17 (b) "Employer" means an individual, partnership, association,
18 corporation, business trust or other business entity that hires a laborer,
19 worker or mechanic for the purposes of a public works construction
20 contract. "Employer" includes subcontractors.

21 (c) "Locality" means the location where the public works
22 construction is to be performed and the adjacent areas from which labor
23 would normally be secured for work on such construction.

24 (d) "Maintenance work" means the repair, but not the replacement, of
25 existing facilities when the size, type or extent of the existing facilities is
26 not changed or increased.

27 (e) "Overtime work" means work that exceeds 10 hours in one day
28 and work that exceeds 40 hours in one calendar week, except as otherwise
29 specified in a contract for public works construction.

30 (f) "Prevailing wage rate" means the wages paid to workers engaged
31 in work of the same or similar character or of the same class in the locality
32 in which the public works construction is being performed. "Prevailing
33 wage rate" includes the basic hourly rate of pay. "Prevailing wage rate"
34 also includes the amount of the rate of contributions irrevocably made to a
35 fund, plan or program, and the amount of the rate of costs to the contractor
36 or subcontractor that may be reasonably anticipated in providing benefits

1 to workers pursuant to an enforceable commitment to carry out a
2 financially responsible plan or program that was communicated in writing
3 to the workers affected. Such benefits include medical or hospital care,
4 pensions on retirement or death, compensation for injuries or illness
5 resulting from occupational activity, insurance to provide any of such
6 benefits, unemployment benefits, life insurance, disability and sickness
7 insurance, accident insurance, vacation and holiday pay, costs of
8 apprenticeship or other similar programs or for other bona fide benefits,
9 but only where the contractor or subcontractor is not required by other
10 federal or state law to provide any of the benefits.

11 (g) "Public works" means all fixed works constructed for public use
12 or benefit and paid for wholly or in part out of public funds. "Public
13 works" includes all buildings, roads, highways, bridges, streets, alleys,
14 sewers, ditches, sewage disposal plants, demolition, waterworks, airports
15 and all other structures, except as otherwise provided by section 2, and
16 amendments thereto.

17 (h) "State agency" means any state office or officer, agency,
18 department, board, commission, institution or bureau. "State agency" does
19 not include a county, township, city, school district, community junior
20 college, municipal university, city, county or district hospital, drainage
21 district, cemetery district, fire district or other political subdivision or
22 taxing unit.

23 (i) "Workers" means laborers, mechanics and workers in the skilled
24 trades hired by an employer engaged in construction of public works
25 pursuant to a contract with a state agency and includes such workers
26 employed by subcontractors.

27 New Sec. 2. (a) Workers employed by a state agency or by an
28 employer on behalf of a state agency and engaged in the construction of
29 public works shall be paid at least the prevailing wage applicable to the
30 worker's occupation category, as determined by the secretary of labor
31 pursuant to section 6, and amendments thereto. Workers who work on a
32 Sunday or on a state holiday shall be paid at least twice the prevailing
33 wage. For the purpose of this subsection, if any holiday falls on a Sunday,
34 the following Monday shall be considered a holiday. Workers who work
35 overtime shall be paid at least one and ½ times the prevailing wage, unless
36 obligated to work overtime by the contract with the state agency and such
37 obligation is consistent with the applicable provisions of K.S.A. 44-1204,
38 and amendments thereto.

39 (b) Employers may use entry-level workers and apprentices for on-
40 the-job training periods. The wage rate for on-the-job training workers
41 shall be equal to 50% of the applicable prevailing wage rate for a
42 journeyman worker under the appropriate occupational title for a specific
43 locality. The combined total of entry-level workers and apprentices shall

1 not exceed a one-to-one ratio with the number of journeyman workers in
2 any occupational title on a public works project.

3 (c) Only workers that are directly employed by employers in actual
4 construction work on the site of the public works project shall be deemed
5 to be engaged in the construction of public works. Workers engaged in the
6 hauling of materials or equipment that includes some phase of construction
7 other than the mere transportation of the materials or equipment to the
8 construction site shall be deemed to be directly employed in actual
9 construction work.

10 (d) The provisions of sections 1 through 9, and amendments thereto,
11 shall not apply to the construction of public works for which either the
12 engineer's estimate or the bid accepted by the state agency for the total
13 project cost is less than \$75,000. In determining the total project cost, the
14 state agency shall include the entire project and shall not separate
15 individual projects within a larger project. A state agency shall not divide a
16 project into multiple contracts for the purpose of lowering the total project
17 cost below the \$75,000 threshold. The total project cost shall include the
18 value of work performed on the project by every person paid by an
19 employer for the person's work on the project and shall also include all
20 materials and supplies purchased for the project. If the total cost of a
21 public works construction project becomes \$75,000 or more as the result
22 of a change order, the provisions of sections 1 through 9, and amendments
23 thereto, shall only apply to the portion of the project that exceeds the
24 \$75,000 threshold.

25 (e) The provisions of sections 1 through 9, and amendments thereto,
26 shall not apply to contracts by the secretary of transportation for
27 nonfederal aid state-funded projects pursuant to K.S.A. 68-2317, and
28 amendments thereto, contracts for any nonfederal aid, public works project
29 for a scientific research and development facility under the university
30 research and development enhancement act governed by K.S.A. 76-787,
31 and amendments thereto, or any contracts governed by the federal Davis-
32 Bacon act.

33 New Sec. 3. (a) Before advertising for bids or undertaking public
34 works construction, a state agency authorized to contract for such
35 construction shall request the secretary of labor to determine the applicable
36 prevailing wage rates and hourly basic rates of pay for all trades and
37 occupations required for the project in the locality where the work is to be
38 performed. The secretary of labor shall determine the applicable prevailing
39 wage rates in the locality in which the work is to be performed in
40 accordance with the secretary's wage order pursuant to section 6, and
41 amendments thereto, and create a schedule of the prevailing wage rates.
42 The secretary of labor's schedule of the prevailing wage rates shall be
43 attached to and made a part of the specifications for the public works

1 construction project. The state agency shall specify such prevailing wage
2 rates when making a request for proposals or when utilizing another
3 manner of securing the public works construction as permitted by law.

4 (b) The state agency shall require in the contract that not less than the
5 specified wage rates for the same or most similar trade or occupation shall
6 be paid to all workers performing such work under the contract. The
7 contractor to whom the contract is awarded and any subcontractor under
8 the contractor shall pay at least the specified wage rates to all workers
9 employed by the contractor or subcontractor in the execution of the
10 contract.

11 (c) The contract shall also provide that the contractor and
12 subcontractor shall furnish to the contracting state agency, and upon
13 request to the department of administration, copies of all payrolls required
14 by section 4, and amendments thereto, not more than 14 days after the end
15 of each pay period. The payrolls shall contain all the data required by the
16 state agency or the department of administration. The contracting state
17 agency or the department of administration may examine all records
18 relating to wages paid to workers for work pursuant to the contract.

19 (d) Prior to the beginning of any work on a public works construction
20 project, the state agency that is awarding a contract for such construction
21 shall notify the secretary of labor, on a form prescribed by the secretary, of
22 the scope of the work to be done, the various types of craftsmen who will
23 be needed for the project and the date work will commence on the project.

24 (e) Each contractor and subcontractor performing work on a public
25 works construction project shall post a clearly legible statement of all
26 prevailing wage rates required to be paid to all workers employed by the
27 employer for the project. The statement shall be kept posted in a prominent
28 and easily accessible place at the project site by each contractor and
29 subcontractor engaged in the project and such notice shall remain posted
30 during the full time that any worker is employed for the project.

31 New Sec. 4. (a) The contractor and each subcontractor engaged in
32 construction of public works shall keep full and accurate records clearly
33 indicating the names, occupations, skilled trades and crafts of every
34 worker employed by the contractor or subcontractor in connection with the
35 project together with an accurate record of the number of hours worked by
36 each worker and the actual wages paid to each worker. Such payroll
37 records shall be open to inspection by any authorized representative of the
38 contracting state agency or of the department of administration during
39 working hours. Such records shall not be destroyed or removed from the
40 state for the period of one year following the completion of the public
41 works construction project.

42 (b) Upon completion of the public works construction contract and
43 prior to final payment on the contract, each contractor and subcontractor

1 shall file with the contracting state agency an affidavit stating that the
2 contractor or subcontractor has fully complied with the provisions and
3 requirements of this act. No state agency shall be authorized to make final
4 payment until such affidavit is filed with the state agency.

5 New Sec. 5. (a) The department of administration, in cooperation
6 with the state agency awarding the contract, shall be responsible for
7 enforcing this act. Complaints of violations of the provisions of this act
8 may be filed with the department of administration or the contracting state
9 agency. An agency that receives a complaint shall promptly notify the
10 respective other agency.

11 (b) The contractor and subcontractor shall upon request furnish to the
12 secretary of administration or the agency head of the contracting state
13 agency copies of all payrolls as required by section 4, and amendments
14 thereto. The secretary of administration and the contracting state agency
15 head may examine all records relating to wages paid to workers on
16 contracts governed by sections 1 through 9, and amendments thereto. The
17 secretary of administration and the contracting state agency head or their
18 authorized agents shall cooperate in performing on-site project reviews,
19 receiving and investigating complaints of violations and conducting
20 training and outreach to contractors.

21 (c) In addition to payment to an employee for backpay of any
22 prevailing wages not paid and any other civil or criminal penalties or
23 remedies pursuant to this act or under law, the contractor shall pay a civil
24 penalty to the secretary of administration of \$200 for each worker
25 employed for each calendar day, or portion thereof, that such worker is
26 paid less than the specified prevailing wage rates for any work done under
27 the contract by the contractor or by any subcontractor of the contractor.
28 The penalty provision shall be a part of the contract and shall be enforced
29 as provided by this section. When making payments to the contractor due
30 under the contract, the contracting state agency may withhold and retain
31 from such payments all sums and amounts due and owing as a result of
32 any violation of this act, as directed by the secretary of administration and
33 as provided in subsection (f). Except as provided in subsection (g), upon
34 receipt of any such penalty, the secretary of administration or the state
35 agency head shall remit such payments to the state treasurer in accordance
36 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
37 receipt of each such remittance, the state treasurer shall deposit the entire
38 amount in the state treasury to the credit of the state general fund.

39 (d) Any contractor may withhold from any subcontractor sufficient
40 sums to cover any penalties withheld by the contracting state agency on
41 account of the subcontractor's failure to comply with the terms of this act,
42 and if payment has already been made, the contractor may recover from
43 the subcontractor the amount of the penalty in an action in a district court

1 of competent jurisdiction.

2 (e) In determining whether a violation of this act has occurred, and
3 whether a penalty shall be imposed pursuant to this section, the secretary
4 of administration and the agency head of the contracting state agency shall
5 cooperate in investigating any complaint. Upon completing such
6 investigation, the secretary of administration shall notify the employer and
7 the contracting agency head of its findings. In undertaking an
8 investigation, the authorized representative of the secretary of
9 administration may administer oaths, take or cause to be taken the
10 depositions of witnesses and require by subpoena the attendance and
11 testimony of witnesses and the production of all books, records and other
12 evidence relative to any matter under investigation or hearing. The
13 subpoena shall be signed and issued by the secretary of administration's
14 authorized representative. In case of failure of any person to comply with
15 any subpoena lawfully issued under this section, or on the refusal of any
16 witness to produce evidence or to testify to any matter regarding which
17 such witness may be lawfully interrogated, the authorized representative of
18 the secretary of administration may file an action to enforce obedience to
19 the subpoenas in any district court of competent jurisdiction.

20 (f) If the secretary of administration concludes that a violation of this
21 act has occurred and a penalty is due, the secretary of administration shall
22 notify the contractor and subcontractor, if applicable, of the finding. Such
23 penalty shall not be due until 45 days after the date of the notice of the
24 penalty. The penalty shall be paid pursuant to the terms of the contract as
25 provided by subsection (c). The employer shall have the right to dispute
26 such notice of penalty in writing to the secretary of administration within
27 45 days of the date of the notice. Proceedings shall be in accordance with
28 the Kansas administrative procedure act. If at any time prior to the
29 secretary of administration pursuing an enforcement action to enforce the
30 monetary penalty provisions of this section against the employer, the
31 employer pays the back wages as determined by the secretary of
32 administration and the contracting state agency, the secretary of
33 administration shall not enforce the monetary penalty provisions of this
34 section.

35 (g) If the employer fails to pay all wages due as determined by the
36 secretary of administration within 45 days following the notice of penalty,
37 or if the employer fails to exercise the right to dispute the penalty, as an
38 alternative or in addition to withholding penalty amounts due from
39 payments under the contract, as provided by subsection (c), the secretary
40 of administration may pursue an action to enforce the monetary penalty
41 provisions of this section against the employer in any district court of
42 competent jurisdiction. If the court orders payment of the penalties as
43 prescribed in this subsection, the secretary of administration shall be

1 entitled to recover actual costs of enforcement from such penalty amount.

2 (h) If the secretary of administration finds that a state agency,
3 contractor or subcontractor has not complied with any of the provisions of
4 this act, the secretary of administration shall give notice of the precise
5 violation in writing to such state agency, contractor or subcontractor
6 stating that the secretary may seek an injunction as provided by this
7 subsection. Sufficient time may be allowed for compliance with the notice
8 as the secretary of administration deems necessary. After the expiration of
9 the time prescribed in the notice, the secretary of administration may
10 inform the attorney general in writing that such notice has been given and
11 that the state agency, contractor or subcontractor has not complied with
12 such notice. Upon receipt thereof, the attorney general shall bring an
13 action in the name of the state in the district court of the county in which
14 such state agency is located or where any such contractor or subcontractor
15 is engaged in the public works construction project. The action shall be to
16 enjoin the award of the public works construction contract, or any further
17 work or payments under such contract if the contract has been awarded,
18 until the requirements of the notice are fully met. The court may issue a
19 temporary restraining order in such action. The attorney general shall post
20 an adequate bond to be set by the court. Upon final hearing, if the attorney
21 general prevails, the court shall issue an order enjoining the awarding of
22 such contract for the public works construction, or any further work or
23 payments under the contract if the contract has been awarded, until the
24 state agency, contractor or subcontractor fully complies with the
25 requirements of the notice to the satisfaction of the court. The plaintiff and
26 defendant in such action shall have the same rights of appeal as are
27 provided by law in other injunction proceedings.

28 (i) The secretary of administration shall maintain and file with the
29 secretary of state a list of the contractors and subcontractors that the
30 secretary of administration has found to have substantially or willfully
31 violated the provisions of this act. Contractors or subcontractors on such
32 list shall be prohibited from contracting directly or indirectly with any
33 state agency for the construction of any public works or from performing
34 any work on any public works as a contractor or subcontractor for a period
35 of one year from the date of the first violation and for a period of three
36 years from the date of each subsequent violation. No state agency shall
37 award a contract for a public works construction to any contractor or
38 subcontractor during the time that the contractor's or subcontractor's name
39 appears on such list. The filing of the list with the secretary of state shall
40 constitute notice to all state agencies and their officers, officials, members,
41 agents and representatives.

42 (j) Nothing in this section shall be interpreted as precluding an action
43 filed by an aggrieved employee as provided by section 9, and amendments

1 thereto, or as otherwise provided by law or any action that may be taken
2 by the department of labor.

3 (k) The secretary of administration shall adopt rules and regulations
4 to implement the provisions of this act.

5 New Sec. 6. (a) The secretary of labor shall determine the prevailing
6 wage rate applicable to contracts under this act and issue wage orders as
7 provided in this section. The secretary of labor shall investigate and
8 consider information submitted regarding wage rates in the locality for
9 public works construction projects that occurred during the year preceding
10 the wage order to be issued, or if no such projects have occurred, in a
11 locality or localities determined by the secretary to be most similar in
12 wage rates to such locality. Information provided regarding wage rates for
13 entry-level workers and apprentices shall not be considered. The prevailing
14 wage rate for each occupational title shall be equal to the weighted average
15 wage for that occupational title.

16 (b) The secretary of labor shall be responsible for determining all
17 prevailing wage rates for each occupational title within a locality and
18 establishing localities for purposes of determining such wage rates. A final
19 determination by the secretary of labor of the prevailing wage rates
20 applicable to every locality shall be made in a wage order to be issued on
21 or before July 1, 2022, and July 1 of each year thereafter. The wage order
22 shall remain in effect until superseded by a new annual wage order. By
23 March 10, 2023, and by March 10 of each year thereafter, the secretary of
24 labor shall make an initial determination of the prevailing wage rate for
25 each occupational title within a locality. The wage rates required to be paid
26 to workers engaged in public works projects shall not be less than the
27 federal or state minimum wage, as applicable.

28 (c) The occupational titles for the determination of prevailing wage
29 rates shall include, but not be limited to, the following occupational titles
30 that may be further defined by the secretary of labor:

- 31 (1) Asbestos worker;
- 32 (2) boilermaker;
- 33 (3) bricklayer;
- 34 (4) carpenter, including pile driver, millwright, lather and linoleum
35 layer;
- 36 (5) cement mason, including plasterer;
- 37 (6) communications technician;
- 38 (7) electrician;
- 39 (8) elevator constructor;
- 40 (9) glazier;
- 41 (10) ironworker;
- 42 (11) general laborer, including semi-skilled laborers;
- 43 (12) mason, including marble mason, marble finisher, terrazzo

- 1 worker, terrazzo finisher, tile setter and tile finisher;
2 (13) operating engineer;
3 (14) outside lineman, lineman operator, groundman, lineman tree
4 trimmer and groundman tree trimmer, or any combination thereof;
5 (15) painter;
6 (16) plumber, including pipefitter;
7 (17) roofer;
8 (18) sheet metal worker;
9 (19) sprinkler fitter; and
10 (20) truck driver, including truck control service driver.

11 (d) (1) A certified copy of any initial or final prevailing wage
12 determination made pursuant to this section shall be filed by the secretary
13 of labor with the secretary of state and with the department of
14 administration and posted on the secretary of labor's website. Copies shall
15 be supplied by the department of labor to all persons requesting such
16 copies within 10 days after the request.

17 (2) At any time within 30 days after a certified copy of a final
18 prevailing wage determination has been filed with the secretary of state
19 and the department of administration, any person who is affected by such
20 determination may object in writing to the final determination or a part
21 thereof by filing a written notice with the secretary of labor stating the
22 specific grounds of the objection. If no objection is filed, such
23 determination is final after 30 days.

24 (3) After the receipt of an objection, the secretary of labor shall set a
25 date for a hearing on the objection that shall be within 60 days of the
26 receipt of the objection. Written notice of the time and place of the hearing
27 shall be given to the objector at least 10 days prior to the date set for the
28 hearing. The proceeding shall be held in accordance with the Kansas
29 administrative procedure act and shall be subject to review in accordance
30 with the Kansas judicial review act.

31 (e) For purposes of this section:

32 (1) "Reported wage sum" means, for each occupational title, the sum
33 of every product of each reported wage rate, including benefits, multiplied
34 by the total number of reportable hours at such wage rate; and

35 (2) "weighted average wage" means the reported wage sum for each
36 occupational title divided by the total number of reportable hours for that
37 occupational title.

38 New Sec. 7. (a) A contractor, subcontractor or agent that willfully
39 pays any worker employed directly on the project site a lesser wage for
40 work done under the contract than the prevailing wage rate as stated in the
41 contract shall be guilty of an unclassified misdemeanor punishable by a
42 fine of not more than \$500 or imprisonment for not more than 30 days, or
43 both such fine and imprisonment. Each day a violation continues shall

1 constitute a separate offense.

2 (b) Any officer, official, member, agent or representative of any state
3 agency, contractor or subcontractor who willfully violates any of the
4 provisions and requirements of this act shall be punished for each violation
5 thereof by a fine not exceeding \$500 or by imprisonment not exceeding 30
6 days, or by both such fine and imprisonment. Each day a violation
7 continues shall constitute a separate offense.

8 New Sec. 8. No employer shall violate the prevailing wage provisions
9 of any contract governed by this act, require any employee to work for less
10 than the prevailing rate of wages fixed in the contract or violate any other
11 provisions of this act. Where workers are employed and their rate of wages
12 has been determined as provided by this act, no person, either on the
13 person's behalf or for any other person, shall request or demand, either
14 before or after such worker is employed, that such worker pay back,
15 return, donate, contribute or give any part or all of the worker's wages to
16 any person upon the statement, representation or understanding that failure
17 to comply with such request or demand will prevent such worker from
18 procuring or retaining employment. No person shall, directly or indirectly,
19 pay, request or authorize any other person to violate this section.

20 New Sec. 9. (a) Any worker employed by an employer who is paid
21 for the worker's services in a sum less than the prevailing wage rates for
22 work done under a public works construction contract governed by this act
23 shall have a right of action against the contractor or subcontractor, if
24 applicable, for double the difference between the amount so paid and the
25 prevailing wage rates provided by the contract. If the worker prevails, the
26 worker shall also recover reasonable attorney fees to be determined by the
27 court.

28 (b) At the written request of the worker, the secretary of labor may
29 take an assignment of such wage claim in trust for the assigning employee
30 and may bring any legal action necessary to collect such claim. If the
31 secretary prevails, the contractor or subcontractor shall be required to pay
32 the costs and such reasonable attorney fees as may be allowed by the
33 court. The secretary shall be allowed to join various claimants against the
34 same employer in one action.

35 Sec. 10. K.S.A. 2021 Supp. 12-16,131 is hereby amended to read as
36 follows: 12-16,131. (a) No city, county or local government unit shall
37 enact or administer any ordinance, resolution or law that requires, nor shall
38 any city, county or local government discriminate against, favor, prefer or
39 base any ordinance, law, policy, economic development program,
40 agreement, grant or incentive on, an employer providing or not providing:

41 (1) Any leave from work, either with or without pay, unless such
42 leave is required by state or federal law;

43 (2) compensation for any leave from work, unless payment of

1 compensation for such leave is required by state or federal law; *or*
2 (3) ~~compensation or wages at any rate higher than the minimum~~
3 ~~wage, unless the payment of higher compensation or wages is required by~~
4 ~~state or federal law; or~~

5 ~~(4) any employee benefit other than those required by state or federal~~
6 ~~law.~~

7 (b) Subsection (a) shall only apply to wages, compensation or
8 benefits, or any combination thereof, paid or provided by a construction
9 contractor or subcontractor performing construction or infrastructure work
10 on a real estate construction or infrastructure project.

11 Sec. 11. K.S.A. 2021 Supp. 12-16,131 is hereby repealed.

12 Sec. 12. This act shall take effect and be in force from and after its
13 publication in the statute book.