

**PREVAILING WAGES ON STATE CONSTRUCTION  
PROJECTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

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 alleged violations 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 bids issued by a procurement unit and contracts resulting from those bids 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 2017, Chapter 348



28 [63G-6a-603](#), as last amended by Laws of Utah 2017, Chapter 348

29 ENACTS:

30 [34-56-101](#), Utah Code Annotated 1953

31 [34-56-102](#), Utah Code Annotated 1953

32 [34-56-201](#), Utah Code Annotated 1953

33 [34-56-202](#), Utah Code Annotated 1953

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

35 [34-56-204](#), Utah Code Annotated 1953

36 [34-56-205](#), Utah Code Annotated 1953

37 [34-56-206](#), Utah Code Annotated 1953

38 [34-56-207](#), Utah Code Annotated 1953

39 [34-56-208](#), Utah Code Annotated 1953



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

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

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

44 **Part 1. General Provisions**

45 **[34-56-101](#). Title.**

46 This chapter is known as "Prevailing Wages on State Construction Projects."

47 Section 2. Section [34-56-102](#) is enacted to read:

48 **[34-56-102](#). Definitions.**

49 As used in this chapter:

50 (1) "Commission" means the labor commission created in Section [34A-1-103](#).

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

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

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

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

56 (3) "Labor commissioner" means the commission's chief executive officer appointed  
57 under Section [34A-1-201](#), or the chief executive officer's designee.

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

- 59 (i) determined by the United States Department of Labor; and
- 60 (ii) generally paid to a worker engaged in similar work.
- 61 (b) "Prevailing wage" includes benefits that are:
- 62 (i) determined by the United States Department of Labor; and
- 63 (ii) customarily provided to or paid on behalf of a worker engaged in similar work.
- 64 (5) "State entity" means the state or any department, division, agency, board,
- 65 commission, or other instrumentality of the state.
- 66 (6) "Worker" means an individual who:
- 67 (a) is employed by:
- 68 (i) a state entity; or
- 69 (ii) a contractor or subcontractor on a construction project for the state entity; and
- 70 (b) is employed to perform actual construction project work on the site of a
- 71 construction project.

72 Section 3. Section **34-56-201** is enacted to read:

73 **Part 2. Prevailing Wage Requirements**

74 **34-56-201. Payment of prevailing wage required -- Exception.**

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

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

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

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

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

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

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

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

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

90 pursuant to and is registered in a training or apprenticeship program approved by the United  
91 States Department of Labor Office of Apprenticeship.

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

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

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

99 Section 4. Section **34-56-202** is enacted to read:

100 **34-56-202. Prevailing wage determination.**

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

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

104 (i) needed to perform the contract; and

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

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

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

111 Section 5. Section **34-56-203** is enacted to read:

112 **34-56-203. Commission to determine prevailing wages.**

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

116 Section 6. Section **34-56-204** is enacted to read:

117 **34-56-204. Records.**

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

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

- 121 (i) the worker's name and occupation or classification; and
- 122 (ii) the actual wages paid to the worker; and
- 123 (b) make the record available for inspection at all reasonable hours by the commission
- 124 or the state entity.

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

126 Government Records Access and Management Act.

127 Section 7. Section **34-56-205** is enacted to read:

128 **34-56-205. Commission investigation of alleged violation -- Adjudicative**

129 **proceeding -- Civil penalty.**

130 (1) The commission shall investigate a contractor or subcontractor's alleged violation

131 of a provision of this chapter if the commission:

- 132 (a) receives a complaint alleging a violation of this chapter; or
- 133 (b) has reason to believe that a violation of this chapter has occurred.

134 (2) If a commission investigation under Subsection (1) indicates a probable violation of

135 a provision of this chapter, the commission may conduct an adjudicative proceeding under

136 Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to determine whether a violation

137 occurred.

138 (3) The commission may impose a civil penalty on a contractor or subcontractor found

139 in an adjudicative proceeding to have violated a provision of this chapter in the amount of \$500

140 for each violation.

141 Section 8. Section **34-56-206** is enacted to read:

142 **34-56-206. Criminal penalty.**

143 A person found by a court of competent jurisdiction to have willfully violated or failed

144 to comply with a provision of this chapter is guilty of a class B misdemeanor.

145 Section 9. Section **34-56-207** is enacted to read:

146 **34-56-207. Civil action.**

147 (1) A worker who is paid less than the prevailing wage for work performed on a

148 construction project may bring a civil action to recover the difference between the prevailing

149 wage and what the worker was actually paid.

150 (2) A court shall award attorney fees and costs to a worker who prevails in an action

151 brought under Subsection (1).

152 Section 10. Section **34-56-208** is enacted to read:

153 **34-56-208. Limits on applicability of chapter.**

154 A requirement of this chapter does not apply:

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

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

157 Section 11. Section **63G-6a-602** is amended to read:

158 **63G-6a-602. Contracts awarded by bidding.**

159 (1) The division or a procurement unit with independent procurement authority may  
160 award a contract for a procurement item by the bidding process, in accordance with the rules of  
161 the applicable rulemaking authority.

162 (2) The bidding standard procurement process is appropriate to use when cost is the  
163 major factor in determining the award of a procurement.

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

166 (4) A contract awarded using the bidding process shall:

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

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

171 Section 12. Section **63G-6a-603** is amended to read:

172 **63G-6a-603. Invitation for bids -- Requirements -- Publication.**

173 (1) The bidding standard procurement process begins when the issuing procurement  
174 unit issues an invitation for bids.

175 (2) An invitation for bids shall:

176 (a) state the period of time during which bids will be accepted;

177 (b) describe the manner in which a bid shall be submitted;

178 (c) state the place where a bid shall be submitted; and

179 (d) include, or incorporate by reference:

180 (i) to the extent practicable, a full description of the procurement items sought and the  
181 full scope of work;

182 (ii) the objective criteria that will be used to evaluate the bids; and

183 (iii) the required contractual terms and conditions[-], including the requirement to  
184 comply with Title 34, Chapter 56, Prevailing Wages on State Construction Projects; and

185 (e) specify the prevailing wage, as defined in Section [34-56-102](#), in the locality where  
186 the construction project will take place for each craft and type of work needed to execute the  
187 contract.

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