

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 258
95TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 30, 2009, with recommendation that the Senate Committee Substitute do pass.

0283S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 290.262, 290.502 and 290.512, RSMo, and to enact in lieu thereof four new sections relating to wages.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 290.262, 290.502 and 290.512, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 290.262,
3 290.502, 290.512, and 290.531, to read as follows:

290.262. 1. Except as otherwise provided in section 290.260, the
2 department shall annually investigate and determine the prevailing hourly rate
3 of wages in each locality for each separate occupational title. A final
4 determination applicable to every locality to be contained in an annual wage
5 order shall be made annually on or before July first of each year and shall remain
6 in effect until superseded by a new annual wage order or as otherwise provided
7 in this section. In determining prevailing rates, the department shall ascertain
8 and consider the applicable wage rates established by collective bargaining
9 agreements, if any, and the rates that are paid generally within the locality, and
10 shall, by March tenth of each year, make an initial determination for each
11 occupational title within the locality. **If the department finds that no rates
12 were paid generally within the locality for an occupational title within
13 the year, the prevailing hourly rate of pay shall be that rate contained
14 in the annual wage order in effect on March tenth of the year the
15 determination is being made.**

16 2. A certified copy of the initial determinations so made shall be filed
17 immediately with the secretary of state and with the department in Jefferson
18 City. Copies shall be supplied by the department to all persons requesting them

19 within ten days after the filing.

20 3. At any time within thirty days after the certified copies of the
21 determinations have been filed with the secretary of state and the department,
22 any person who is affected thereby may object in writing to a determination or a
23 part thereof that he deems objectionable by filing a written notice with the
24 department, stating the specific grounds of the objection. If no objection is filed,
25 the determination is final after thirty days.

26 4. After the receipt of the objection, the department shall set a date for
27 a hearing on the objection. The date for the hearing shall be within sixty days
28 of the receipt of the objection. Written notice of the time and place of the hearing
29 shall be given to the objectors at least ten days prior to the date set for the
30 hearing.

31 5. The department at its discretion may hear each written objection
32 separately or consolidate for hearing any two or more written objections. At the
33 hearing the department shall first introduce in evidence the investigation it
34 instituted and the other facts which were considered at the time of the original
35 determination which formed the basis for its determination. The department, or
36 the objector, or any interested party, thereafter may introduce any evidence that
37 is material to the issues.

38 6. Within twenty days of the conclusion of the hearing, the department
39 shall rule on the written objection and make the final determination that it
40 believes the evidence warrants. Immediately, the department shall file a certified
41 copy of its final determination with the secretary of state and with the
42 department and shall serve a copy of the final determination on all parties to the
43 proceedings by personal service or by registered mail.

44 7. This final decision of the department of the prevailing wages in the
45 locality for each occupational title is subject to review in accordance with the
46 provisions of chapter 536, RSMo. Any person affected, whether or not the person
47 participated in the proceedings resulting in the final determination, may have the
48 decision of the department reviewed. The filing of the final determination with
49 the secretary of state shall be considered a service of the final determination on
50 persons not participating in the administrative proceedings resulting in the final
51 determination.

52 8. At any time before trial any person affected by the final determination
53 of the department may intervene in the proceedings to review under chapter 536,

54 RSMo, and be made a party to the proceedings.

55 9. Any annual wage order made for a particular occupational title in a
56 locality may be altered once each year, as provided in this subsection. The
57 prevailing wage for each such occupational title may be adjusted on the
58 anniversary date of any collective bargaining agreement which covers all persons
59 in that particular occupational title in the locality in accordance with any annual
60 incremental wage increases set in the collective bargaining agreement. If the
61 prevailing wage for an occupational title is adjusted pursuant to this subsection,
62 the employee's representative or employer in regard to such collective bargaining
63 agreement shall notify the department of this adjustment, including the effective
64 date of the adjustment. The adjusted prevailing wage shall be in effect until the
65 next final annual wage order is issued pursuant to this section. The wage rates
66 for any particular job, contracted and commenced within sixty days of the
67 contract date, which were set as a result of the annual or revised wage order,
68 shall remain in effect for the duration of that particular job.

69 10. In addition to all other reporting requirements of sections 290.210 to
70 290.340, each public body which is awarding a contract for a public works project
71 shall, prior to beginning of any work on such public works project, notify the
72 department, on a form prescribed by the department, of the scope of the work to
73 be done, the various types of craftsmen who will be needed on the project, and the
74 date work will commence on the project.

 290.502. 1. Except as may be otherwise provided pursuant to sections
2 290.500 to 290.530, effective January 1, 2007, every employer shall pay to each
3 employee wages at the rate of \$6.50 per hour, or wages at the same rate or rates
4 set under the provisions of federal law as the prevailing federal minimum wage
5 applicable to those covered jobs in interstate commerce, whichever rate per hour
6 is higher.

7 2. The minimum wage shall be increased or decreased on January 1, 2008,
8 and on January 1 of successive years, by the increase or decrease in the cost of
9 living. On September 30, 2007, and on each September 30 of each successive
10 year, the director shall measure the increase or decrease in the cost of living by
11 the percentage increase or decrease as of the preceding July over the level as of
12 July of the immediately preceding year of the Consumer Price Index for Urban
13 Wage Earners and Clerical Workers (CPI-W) or successor index as published by
14 the U.S. Department of Labor or its successor agency, with the amount of the

15 minimum wage increase or decrease rounded to the nearest five cents. **This**
16 **subsection shall not apply to employees who receive and retain**
17 **compensation in the form of gratuities, except that any modification of**
18 **the minimum wage made under this subsection prior to January 2,**
19 **2010, shall be used to calculate the minimum wage for those receiving**
20 **and retaining compensation in the form of gratuities pursuant to this**
21 **section and section 290.512, RSMo.**

290.512. 1. No employer of any employee who receives and retains
2 compensation in the form of gratuities in addition to wages is required to pay
3 wages in excess of fifty percent of the minimum wage rate specified in sections
4 290.500 to 290.530, however, total compensation for such employee shall total at
5 least the minimum wage specified in sections 290.500 to 290.530, the difference
6 being made up by the employer. **However, the total compensation for such**
7 **tipped employee shall not be less than the minimum wage specified in**
8 **section 290.502.**

9 2. If an employee receives and retains compensation in the form of goods
10 or services as an incident of his employment and if he is not required to exercise
11 any discretion in order to receive the goods or services, the employer is required
12 to pay only the difference between the fair market value of the goods and services
13 and the minimum wage otherwise required to be paid by sections 290.500 to
14 290.530. The fair market value of the goods and services shall be computed on
15 a weekly basis. The director shall provide by regulation a method of valuing the
16 goods and services received by any employee in lieu of the wages otherwise
17 required to be paid under the provisions of sections 290.500 to 290.530. He shall
18 also provide by regulation a method of determining those types of goods and
19 services that are an incident of employment the receipt of which does not require
20 any discretion on the part of the employee.

290.531. The department of labor and industrial relations shall
2 **promulgate rules to implement the provisions of sections 290.500 to**
3 **290.530. Any rule or portion of a rule, as that term is defined in section**
4 **536.010, RSMo, that is created under the authority delegated in this**
5 **section shall become effective only if it complies with and is subject to**
6 **all of the provisions of chapter 536, RSMo, and, if applicable, section**
7 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
8 **and if any of the powers vested with the general assembly under**

9 chapter 536, RSMo, to review, to delay the effective date, or to
10 disapprove and annul a rule are subsequently held unconstitutional,
11 then the grant of rulemaking authority and any rule proposed or
12 adopted after August 28, 2009, shall be invalid and void.

✓

Unofficial

Bill

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