

FIRST REGULAR SESSION

SENATE BILL NO. 332

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHILDERS.

Read 1st time January 23, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0642S.051

AN ACT

To repeal sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, relating to the prevailing wage, and to enact in lieu thereof eight new sections relating to the same subject.

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

Section A. Sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.290, and 290.340, to read as follows:

290.210. As used in sections 290.210 to 290.340, unless the context indicates otherwise, **the following terms mean:**

(1) "Construction" [includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair.], **for-profit activities done by laborers, workers or mechanics on public works involving the carrying out of any building, clearing, filling, excavation, or substantial enlargement or improvement in the size or use of any structure or the appearance of any land, but not including decorating, maintenance, replacement, or repairs. When appropriate to the context, "construction" refers to the act of construction or the result of construction.**

(2) "Department" [means], the department of labor and industrial relations[.];

(3) "Locality" [means], the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled workmen to construct the public works efficiently and properly, "locality" may include two

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

or more counties adjacent to the one in which the work or construction is to be performed and from which such workers may be obtained in sufficient numbers to perform the work, and that, with respect to contracts with the state highways and transportation commission, "locality" may be construed to include two or more adjacent counties from which workmen may be accessible for work on such construction[.];

(4) "Maintenance work" [means], the repair[, but not the] **or** replacement, of existing facilities **components** when the size, type or [extent] **intended use** of the existing facilities is not thereby changed or increased[.];

(5) "Prevailing hourly rate of wages" [means], the wages paid generally, in the locality in which the public works is being performed, to workmen engaged in work of a similar character including the basic hourly rate of pay and the amount of the rate of contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan or program, and the amount of the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workmen and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workmen affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal or state law to provide any of the benefits; provided, that the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the department, insofar as sections 290.210 to 290.340 are concerned, may be discharged by the making of payments in cash, by the making of irrevocable contributions to trustees or third persons as provided herein, by the assumption of an enforceable commitment to bear the costs of a plan or program as provided herein, or any combination thereof, where the aggregate of such payments, contributions and costs is not less than the rate of pay plus the other amounts as provided herein[.];

(6) "Public body" [means], the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds[.];

(7) "Public works" [means], all fixed works constructed for public use or benefit [or] **and directly** paid for wholly or in part out of public funds. It also includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility. It does not include any work done for or by any drainage or levee district[.];

(8) "Workmen" [means], laborers, workmen and mechanics.

290.220. It is hereby declared to be the policy of the state of Missouri that a wage of no less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed shall be paid to all workmen employed by or on behalf of any public body engaged in public works [exclusive of], **but not including** maintenance work **or repairs**.

290.230. 1. Not less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed, and not less than the prevailing hourly rate of wages for legal holiday and overtime work, shall be paid to all workmen employed by or on behalf of any public body engaged in the **actual** construction of public works, [exclusive of] **but not including** maintenance work **or repairs**. Only such workmen as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job shall be deemed to be employed upon public works.

2. When the hauling of materials or equipment includes some phase of construction other than the mere transportation to the site of the construction, workmen engaged in this dual capacity shall be deemed employed directly on public works.

290.250. Every public body authorized to contract for or construct public works, before advertising for bids or undertaking such construction shall request the department to determine the prevailing rates of wages for workmen for the class or type of work called for by the public works, in the locality where the work is to be performed. The department shall determine the prevailing hourly rate of wages in the locality in which the work is to be performed for each type of workman required to execute the contemplated contract and such determination or schedule of the prevailing hourly rate of wages shall be attached to and made a part of the specifications for the work. **Where no wages are reported for a particular locality the hourly wage rate shall be as provided for in section 290.502.** The public body shall then specify in the resolution or ordinance and in the call for bids for the contract, what is the prevailing hourly rate of wages in the locality for each type of workman needed to execute the contract and also the general prevailing rate for legal holiday and overtime work.

It shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workmen employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages shall be paid to all workmen performing work under the contract. It shall also require in all contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. The contractor shall forfeit as a penalty to the state, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded ten dollars for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said

stipulated rates for any work done under said contract, by him or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of sections 290.210 to 290.340 committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under said contract, to withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of sections 290.210 to 290.340, and if payment has already been made to him, the contractor may recover from him the amount of the penalty in a suit at law.

290.260. 1. The department, as it deems necessary, shall from time to time investigate and determine the prevailing hourly rate of wages in the localities. A determination applicable to every locality to be contained in a general wage order shall be made annually on or before July first of each year for the Missouri state highways and transportation commission and shall remain in effect until superseded by a new general wage order. In determining prevailing rates, the department shall ascertain and consider [the applicable wage rates established by collective bargaining agreements, if any, and] the rates that are paid generally within the locality.

2. A certified copy of the determination so made shall be filed immediately with the secretary of state and with the department in Jefferson City. Copies shall be supplied by the department to all persons requesting them within ten days after the filing.

3. At any time within thirty days after the certified copies of the determinations have been filed with the secretary of state and the department, any person who is affected thereby may object in writing to the determination or the part thereof that he deems objectionable by filing a written notice with the department, stating the specific grounds of the objection.

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

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

6. Within twenty days of the conclusion of the hearing, the department must rule on the

written objection and make the final determination that it believes the evidence warrants. Immediately, the department shall file a certified copy of its final determination with the secretary of state and with the department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

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

8. At any time before trial any person affected by the final determination of the department may intervene in the proceedings to review under chapter 536, RSMo, and be made a party to the proceedings.

9. All proceedings in any court affecting a determination of the department under the provisions of sections 290.210 to 290.340 shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

290.262. 1. Except as otherwise provided in section 290.260, the department shall annually investigate and determine the prevailing hourly rate of wages in each locality for each separate occupational title. A final determination applicable to every locality to be contained in an annual wage order shall be made annually on or before July first of each year and shall remain in effect until superseded by a new annual wage order or as otherwise provided in this section. In determining prevailing rates, the department shall ascertain [and consider the applicable wage rates established by collective bargaining agreements, if any, and] the rates that are paid generally within the locality, and shall, by March tenth of each year, make an initial determination for each occupational title within the locality.

2. A certified copy of the initial determinations so made shall be filed immediately with the secretary of state and with the department in Jefferson City. Copies shall be supplied by the department to all persons requesting them within ten days after the filing.

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

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

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

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

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

8. At any time before trial any person affected by the final determination of the department may intervene in the proceedings to review under chapter 536, RSMo, and be made a party to the proceedings.

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

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

needed on the project, and the date work will commence on the project.

290.290. 1. The contractor and each subcontractor engaged in any construction of public works shall keep full and accurate records clearly indicating the [names,] occupations and crafts of every workman employed by them in connection with the public work together with an accurate record of the number of hours worked by each workman and the actual wages paid therefor. The payroll records required to be so kept shall be open to inspection by any authorized representative of the contracting public body or of the department at any reasonable time and as often as may be necessary and such records shall not be destroyed or removed from the state for the period of one year following the completion of the public work in connection with which the records are made.

2. Each contractor and subcontractor shall file with the contracting public body upon completion of the public work and prior to final payment therefor an affidavit stating that he had fully complied with the provisions and requirements of this chapter, and no public body shall be authorized to make final payment until such affidavit is filed therewith in proper form and order.

[3. Each contractor and subcontractor engaged in any construction of public works shall have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with such public works project during the time the contractor or subcontractor is engaged on such project. The sign shall be legible from a distance of twenty feet but the size of the lettering need not be larger than two inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the construction project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

4. The provisions of subsection 3 of this section shall not apply to construction of public works for which the contract awarded is in the amount of two hundred fifty thousand dollars or less.]

290.340. Any officer, official, member, agent or representative of any public body, contractor or subcontractor who willfully violates [and omits to comply with] any of the provisions and requirements of sections 290.210 to 290.340 shall be punished for each violation thereof by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day such **willful** violation [or omission] continues shall constitute a separate offense as contemplated by this section.

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