

FIRST REGULAR SESSION

SENATE BILL NO. 349

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS GREEN, CALLAHAN, KENNEDY AND GRAHAM.

Read 1st time February 14, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

0879S.02I

AN ACT

To repeal sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.263, 290.265, 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330, 290.335, and 290.340, RSMo, and to enact in lieu thereof twenty new sections relating to prevailing wages on public works, with penalty provisions.

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, 290.263, 290.265, 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330, 290.335, and 290.340, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.263, 290.265, 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330, 290.335, 290.340, and 290.345, to read as follows:

290.210. As used in sections 290.210 to [290.340] **290.345**, unless the context indicates otherwise:

(1) **"Commission", the labor and industrial relations commission;**
(2) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair[.];

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

(4) **"Division", the division of labor standards in the department of labor and industrial relations;**

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

(5) "Employer", any individual, partnership, association, corporation, business, business trust, company, or any person or group of persons employing workers in actual construction work;

[(3)] **(6) "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] workers to construct the public works efficiently and properly, "locality" may include two 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] workers may be accessible for work on such construction[.];**

[(4)] **(7) "Maintenance work" [means the repair, but not the replacement, of existing facilities when the size, type or extent of the existing facilities is not thereby changed or increased.], ordinary repairs or the recurrent, day-to-day, periodic, or scheduled work unless it involves the overhaul or replacement of major constituent parts;**

(8) "Major repairs", repairs done by overhaul or replacement of major constituent parts that have deteriorated or have otherwise been removed or damaged;

[(5)] **(9) "Prevailing hourly rate of wages" [means], the wages paid generally, in the locality in which the public works is being performed, to [workmen] workers 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] workers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the [workmen] workers 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] **290.345** 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. **Two thousand eighty hours shall be used for fringe benefit credit calculations. Fringe amounts paid for hours worked on public works projects cannot be used to fund hours worked on nonpublic works projects;**

[(6)] ~~(10)~~ "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)] ~~(11)~~ "Public works" [means], all fixed works constructed for public use or benefit or 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] ~~(12)~~ **"Workers"**, laborers, [workmen and] mechanics, **and other individuals who are engaged in actual construction work. An individual is a worker when the person or persons for whom the work is performed have the right to control and direct the individual who performs the work, but does not include permanently employed workers of a public body or workers regularly employed by a public body for six months prior to the commencement of a public works project and six months after the completion of a public works project.**

290.220. 1. 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 [workman] **workers** employed by or on behalf of any public body engaged in public works **on all projects or aggregate of projects in an amount in**

excess of five thousand dollars, exclusive of maintenance work. No public body shall divide a public works project into more than one contract for the purpose of avoiding this policy.

2. Each worker shall be given notice of the wage rates issued by the department that are contained in the contract specifications. A copy of the wage rates shall be delivered to each worker along with their first paycheck on the project.

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] **workers** employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work. Only such [workmen] **workers** 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. **The site of the building or construction job shall include adjacent or nearby property provided its use is dedicated exclusively, or nearly so, to the completion of the work under the contract.**

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] **workers** engaged in this dual capacity shall be deemed employed directly on public works.

290.250. 1. Every public body authorized to contract for or construct public works, before advertising for bids or undertaking such construction shall request **from** 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 annual wage order for** 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] **and** the prevailing hourly rate of wages shall be attached to and made a part of the specifications for the work. 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] **worker** 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] **workers** 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 **once a week** to all [workmen] **workers** 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.]

2. The contractor shall pay penalties to the contracting public body in the amount of fifty dollars per calendar day, or for any portion of a calendar day, for each worker who is paid less than the prevailing wage rate for any work done under such contract. The penalties shall apply to any construction work performed pursuant to any contract or subcontract, and all contracts or subcontracts shall specifically contain penalty provisions to this effect. The department shall have the authority to collect all unpaid penalties due the contracting public body.

3. The contractor shall, in addition to the penalties provided in subsection 2 of this section, pay penalties to the department in the amount of fifty dollars per calendar day, or for any portion of a calendar day, for each worker who is paid less than the prevailing wage rate for any work done under such contract. The penalties shall apply to any construction work performed pursuant to any contract or subcontract, and all contracts or subcontracts shall specifically contain penalty provisions to this effect. The department shall have the authority to collect all unpaid penalties due the department. The funds collected shall be deposited into the fund established pursuant to subsection 4 of this section for the department, and shall, subject to appropriations, only be used by the department for educational efforts related to the state's prevailing wage law and for enforcement of such law.

4. There is hereby created in the state treasury a fund to be known as the "Prevailing Wage Enforcement and Education Fund". Penalty amounts collected pursuant to subsection 3 of this section by the department for violations of the prevailing wage law shall be transmitted to the department of revenue for deposit in such fund.

5. Notwithstanding the provisions of section 33.080, RSMo, no portion of the prevailing wage enforcement and education fund shall be transferred to the general revenue fund until and at such times when the amount in the fund at the end of the biennium exceeds two times the amount of the appropriations from the fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the fund for the preceding fiscal years.

6. It shall be the duty of [such] a public body awarding [the] a 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] **290.345** committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under [said] **such** 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] **290.345**. It shall be lawful for any contractor to withhold from any subcontractor under him **or her** sufficient sums to cover any penalties withheld from him **or her** by the awarding body on account of [said] **such** subcontractor's failure to comply with the terms of sections 290.210 to [290.340] **290.345**, and if payment has already been made to him, the contractor may recover from him **or her** the amount of the penalty in a suit at law.

7. **It shall be the duty of a public body who awards a contract to notify the department when all work is completed and all final payments have been made for the public works project.**

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, but excluding rates paid to workers in a bonafide apprenticeship program pursuant to 8 CSR 30-3.030. The information submitted to the department shall be consistent with the occupational titles and work descriptions as established by 8 CSR 30-3.060. The evidence shall include rate of pay information. The collective bargaining agreement rate shall be adopted as the prevailing wage rate unless there is evidence of no less than eighty hours of actual work performed in the locality during the preceding calendar year of the general wage order. To supersede a wage rate established by a collective bargaining agreement, an individual or individuals shall submit evidence to the department on a form prescribed or accepted by the department. If the department determines the information submitted is fraudulent, the department may forward the information to the prosecuting attorney of the locality in which the person submitting such information resides.

2. A certified copy of the [determination so made] **general wage order** 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] **the commission. The general wage order shall be posted on the division's web page** within ten days after the filing.

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

4. Within thirty days of the receipt of the objection, the [department] **commission** 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] **commission** 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] **commission shall** rule on the written objection and make the final determination that it believes the evidence warrants. Immediately, the [department] **commission** 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] **commission** 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] **commission** 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. **The division shall be notified of all applications for review, and may intervene as a party in such actions.**

8. At any time before trial any person affected by the final determination of the [department] **commission** 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] **commission** under the provisions of sections 290.210 to [290.340] **290.345** 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, **but excluding rates paid to workers in a bonafide apprenticeship program pursuant to 8 CSR 30-3.030. The information submitted to the department shall be consistent with the occupational titles and work descriptions as established by 8 CSR 30-3.060. The evidence shall include rate of pay information. The collective bargaining agreement rate shall be adopted as the prevailing wage rate unless there is evidence of no less than eighty hours of actual work performed in the locality during the preceding calendar year of the annual wage order. To supersede a wage rate established by a collective bargaining agreement, an individual or individuals shall submit evidence to the department on a form prescribed or accepted by the department. If the department determines the information submitted is fraudulent, the department may forward the information to the prosecuting attorney of the locality in which the person submitting such information resides.**

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] **the commission. The annual wage order shall be posted on the division's web page** within ten days after the filing.

3. At any time within thirty days after the certified copies of the [determinations] **annual wage orders** have been filed with the secretary of state and the [department] **commission**, any person who is affected thereby may object in writing to [a determination] **an annual wage order** or a part thereof that [he deems] **is deemed** objectionable by filing a written notice with the [department] **commission**, stating the specific grounds of the objection. If no objection is filed **for a locality**, the [determination is] **rates in the annual wage order for that locality are** final after thirty days.

4. After the receipt of the objection, the [department] **commission** 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] **commission** 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 annual wage order**. 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] **commission** shall rule on the written objection and make the final determination that it believes the evidence warrants. Immediately, the [department] **commission** 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] **commission** 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] **commission** 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. **The division shall be notified of all applications for review, and may intervene as a party in such actions.**

8. At any time before trial any person affected by the final determination of the [department] **commission** 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] **290.345**, 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] **workers** who will be needed on the project, and the date work will commence on the project.

290.263. The hourly wages to be paid as prescribed in section 290.250 to [workmen] **workers** upon public works shall not be less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

290.265. A clearly legible statement of all prevailing hourly wage rates to be paid to all [workmen] **workers** employed in order to execute the contract and employed on the construction of the public works shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor engaged in the public works projects under the provisions of this law and such notice shall remain posted during the full time that any such [workman] **worker** shall be employed on the public works.

290.270. The finding of the department ascertaining and declaring the prevailing hourly rate of wages shall be final for the locality, unless reviewed under the provisions of sections 290.210 to [290.340] **290.345**. Nothing in sections 290.210 to [290.340] **290.345**, however, shall be construed to prohibit the payment to any [workman] **worker** employed on any public work of more than the prevailing rate of wages. Nothing in sections 290.210 to [290.340] **290.345** shall be construed to limit the hours of work which may be performed by any [workman] **worker** in any particular period of time.

290.280. The authorized representative of the department may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any **public works project or nonpublic works project if the information is needed in any investigation concerning a public works project, prevailing wage survey information, or any matter under investigation or hearing. The information may be requested for a period of two years after final payment is made on a public works project.** The subpoena shall be signed and issued by the

department's authorized representative. In case of failure of any person to comply with any subpoena lawfully issued under this section, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, the authorized representative of the department may proceed to enforce obedience to the subpoenas in the manner provided by section 536.077, RSMo, for administrative agencies. The authorized representative of the department shall have the power to certify to official acts.

290.290. 1. The contractor and each subcontractor engaged in any construction of public works shall keep full and accurate **payroll** 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] **containing the name, address, and Social Security number of each worker, the occupational title or titles for the work performed, the rate of pay, daily and weekly hours worked for each occupational title, deductions made, and actual wages paid for work performed by each worker.** 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] **two years** following the [completion of] **final payment on the contract** for the public work in connection with which the records are made.

2. **Each month the contracting public body shall collect certified copies of current payroll records from each contractor and subcontractor performing public works construction. The payroll records shall contain the name, address, and Social Security number of each worker, the occupational title or titles for the work performed, the rate of pay, daily and weekly hours worked for each occupational title, deductions made, and actual wages paid for work performed by each worker. Each month, the public body shall examine the payroll and other records of each contractor or subcontractor to ensure proper compliance with the provisions of Missouri's prevailing wage law. The public body shall keep the payroll and other records on file for each project for no less than two years from the date the final payments are made on the project. The payroll and other records kept by the public body shall be available at all times for inspection by an authorized**

representative of the department.

3. 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.] 4. 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.] 5. The provisions of subsection [3] 4 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.

290.300. Any [workman] **worker** employed by the contractor or by any subcontractor under the contractor who shall be paid for his services in a sum less than the [stipulated rates for work done under the contract,] **applicable prevailing wage rate** shall have a right of action for double whatever difference there may be between the amount so paid and the [rates provided by the contract] **applicable prevailing wage rate**, together with a reasonable attorney's fee to be determined by the court, and an action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages.

290.305. No person, firm or corporation shall violate the wage provisions of any contract contemplated in sections 290.210 to [290.340] **290.345** or suffer or require any employee to work for less than the rate of wages so fixed, or violate

any of the provisions contained in sections 290.210 to [290.340] **290.345**. Where [workmen] **workers** are employed and their rate of wages has been determined as provided in sections 290.210 to [290.340] **290.345**, no person[, either for himself or any other person,] shall request, demand or receive, either before or after such [workman] **worker** is engaged, that such [workman] **worker** pay back, return, donate, contribute, or give any part or all of [said workman's] **such worker's** wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such [workman] **worker** from procuring or retaining employment, and no person shall, directly or indirectly, pay, request or authorize any other person to violate this section. This section does not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

290.315. All contractors and subcontractors required in sections 290.210 to [290.340] **290.345** to pay not less than the prevailing rate of wages shall make full payment of such wages in legal tender, without any deduction for food, sleeping accommodations, transportation, use of small tools, or any other thing of any kind or description. This section does not apply where the employer and [employee] **worker** enter into an agreement in writing at the beginning of [said] **such** term of employment covering deductions for food, sleeping accommodations, or other similar items, provided such agreement is submitted by the employer to the public body awarding the contract and the same is approved by such public body as fair and reasonable.

290.320. No public body, officer, official, member, agent or representative authorized to contract for public works shall fail, before advertising for bids or contracting for such construction, to [have the department determine the prevailing rates of wages of workmen for each class of work called for by the public works in] **request the annual wage order** for the locality where the work is to be performed as provided in sections 290.210 to [290.340] **290.345**.

290.325. No public body, officer, official, member, agent or representative thereof authorized to contract for public works shall award a contract for the construction of such improvement or disburse any funds on account of the construction of such public improvement, unless such public body has [first had the department determine the prevailing rates of wages of workmen] **included the wage rates set forth in the applicable annual or general wage order** for the class of work called for by such public works in the locality where the

work is to be performed [and such determination has been made a part of] **in** the specifications and contract for such public works.

290.330. The department after investigation, upon complaint or upon its own initiative, shall file with the secretary of state a list of the contractors and subcontractors who it finds have been [prosecuted and] convicted [for] **or plead guilty or nolo contendere** to violations of sections 290.210 to [290.340] **290.345** and such contractor or subcontractor, or simulations thereof, shall be prohibited from contracting directly or indirectly with any public body for the construction of any public works or from performing any work on the same as a contractor or subcontractor for a period of one year from the date of the first conviction [for such violation and] **or entry of a pleading to the charge of violating the prevailing wage law, and** for a period of three years from the date of each subsequent violation [and], conviction, **guilty plea, or plea of nolo contendere** thereof. No public body shall award a contract for a public works to any contractor or subcontractor, or simulation thereof, during the time that its name appears on said list. The filing of the notice of conviction, **guilty plea, or plea of nolo contendere** with the secretary of state shall be notice to all public bodies and their officers, officials, members, agents and representatives **that such actions have occurred. The secretary of state, upon notification, shall publish the notice of debarment when the final actions for the conviction, guilty plea, or plea of nolo contendere have occurred.**

290.335. 1. If it is found that a public body, contractor or subcontractor has not complied with any of the terms of sections 290.210 to [290.340] **290.345**, the department shall give notice of the precise violation in writing to such public body, contractor or subcontractor. Sufficient time may be allowed for compliance therewith as the department deems necessary. After the expiration of the time prescribed in [said] **such** notice, the department may in writing inform the attorney general of the fact that such notice has been given and that the public body, contractor or subcontractor or the authorized representative or agent thereof to whom it was directed has not complied with such notice. Upon receipt thereof, the attorney general shall at the earliest possible time bring suit in the name of the state in the circuit court of the county in which such public body is located or where any such contractor or subcontractor is engaged in any public works to enjoin the award of such contract for a public works, or any further work or payments thereunder if the contract has been awarded, until the requirements of such notice are fully complied with. The court may issue a temporary

restraining order **and a preliminary injunction** with due notice to the defendant in such action. [The plaintiff shall in any such injunctive action post an adequate bond to be set by the circuit judge.] Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the department to the defendant were not unreasonable or arbitrary, it shall issue an order enjoining the awarding of such contract for a public works, or any further work or payments thereunder if the contract has been awarded, until the notice is fully complied with. Such injunction shall continue operative until the court is satisfied that the requirements of such notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power in it in other similar cases. Both the plaintiff and defendant in such action have the same rights of appeal as are provided by law in other injunction proceedings.

2. Whenever it appears to the department that a contractor or subcontractor has engaged in a violation of any of the provisions and requirements of sections 290.210 to 290.345, such that a penalty is due to a public body and the department or a wage is due to a worker, or both, then the department may notify the attorney general of that determination in writing. Upon receipt of such notice, the attorney general may bring suit in the name of the state in the circuit court of the county in which the contracting body is located to obtain restitution on behalf of workers not properly paid or penalties due the public body. The public body, if not the state, shall be joined in any such suit and shall have authority to compromise its claims for penalty in the discretion of the attorney general. Nothing in this subsection shall be construed to preclude any person or public body from asserting any cause of action which it may have against a contractor or subcontractor or surety pursuant to contractual or statutory rights.

3. All actions for the collection of any deficiency in wages or penalties due shall be commenced within five years of the accrual of the cause of action.

290.340. **1.** Any officer, official, member, agent or representative of any public body, contractor or subcontractor who willfully violates and omits to comply with, **or knowingly provides false information with regard to**, any of the provisions and requirements of sections 290.210 to [290.340] **290.345** 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 violation or omission continues shall constitute a separate offense as contemplated by this section.

2. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions pursuant to this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where venue is appropriate.

290.345. Any person or persons, company, or corporation who shall discharge or refuse to further employ a worker for filing a complaint or assisting in the investigation of a complaint relating to a violation of sections 290.210 to 290.345 shall be punished by a fine not exceeding five hundred dollars or by imprisonment as penalty for such dismissal. Each day such violation or omission continues shall constitute a separate offense as contemplated by this section. In such a case, the worker shall be returned to employment and shall receive from the employer wages from the date of discharge or refusal to employ until the date of re-employment.

T

Bill

Copy