

FIRST REGULAR SESSION

SENATE BILL NO. 175

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS MUNZLINGER, NIEVES, LAGER, RICHARD AND RIDGEWAY.

Read 1st time January 26, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0707S.02I

AN ACT

To repeal sections 34.203, 34.206, 34.209, 34.212, 34.216, and 34.217, RSMo, and to enact in lieu thereof eight new sections relating to public contracts.

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

Section A. Sections 34.203, 34.206, 34.209, 34.212, 34.216, and 34.217, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 34.203, 34.206, 34.207, 34.209, 34.212, 34.216, 34.217, and 34.218, to read as follows:

34.203. The provisions of sections 34.203 to [34.216] **34.218** shall be known and may be cited as the "Fairness in Public Construction Act".

34.206. The purpose of sections 34.203 to [34.216] **34.218** is to fulfill the state's proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and efficient expenditures of public funds in connection with publicly funded or assisted construction projects. Nothing in sections 34.203 to [34.216] **34.218** shall prohibit employers or other parties covered by the National Labor Relations Act from entering into agreements or engaging in any other activity arguably protected by law, nor shall any aspect of sections 34.203 to [34.216] **34.218** be interpreted in such a way as to interfere with the labor relations of parties covered by the National Labor Relations Act.

34.207. As used in this chapter, the term "public funds" shall mean those funds belonging to the state, any agency of the state, or any instrumentality or political subdivision thereof.

34.209. Except as provided in section 34.216, the state, any agency of the state, or any instrumentality or political subdivision thereof, when engaged in procuring or letting contracts for construction of a project that is

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

4 funded [by greater than fifty percent of state funds] **in any amount with**
5 **public funds**, shall ensure that bid specification, project agreements, and other
6 controlling documents entered into, required, or subject to approval by the state,
7 agency, [or] instrumentality, **or political subdivision** do not:

8 (1) Require or prohibit bidders, offerors, contractors, or subcontractors to
9 enter into or adhere to agreements with one or more labor organizations on the
10 same or related projects; or

11 (2) Discriminate against bidders, offerors, contractors, or subcontractors
12 for entering or refusing to enter or to remain signatory or otherwise adhere to
13 agreements with one or more labor organizations on the same or related
14 construction projects.

34.212. 1. The state, any agency of the state, or any instrumentality, **or**
2 **political subdivision** thereof shall not issue grants or enter into cooperative
3 agreements for construction projects, a condition of which requires that bid
4 specifications, project agreements, or other controlling documents pertaining to
5 the grant or cooperative agreement contain any of the elements specified in
6 section 34.209.

7 2. The state, any agency of the state, or any instrumentality, **or political**
8 **subdivision** thereof shall exercise such authority as may be required to preclude
9 a grant recipient or party to a cooperative agreement from imposing any of the
10 elements specified in section 34.209 in connection with any grant or cooperative
11 agreement awarded or entered into. Nothing in sections 34.203 to [34.216]
12 **34.218** shall prohibit contractors or subcontractors from voluntarily entering into
13 agreements described in section 34.209.

34.216. 1. For purposes of this section, the term "project labor agreement"
2 shall be defined as a [multiemployer, multiunion] pre-hire agreement **by or**
3 **between an employer and one or more labor union** designed to systemize
4 labor relations at a construction site that is required by the state, **any agency**
5 **of the state**, or [a] **any instrumentality, or political subdivision [of the state]**
6 **thereof** as a condition of [a] bid specification, **bid submission, or contract**
7 **award** for a construction project, thereby insuring that [all] contractors and
8 subcontractors on a project comply with the terms of a union-only
9 agreement. **The term "agreement" shall include any arrangement, written**
10 **or otherwise communicated, whether explicit or implicit in nature.**

11 2. The state, **any agency of the state, or any instrumentality, or [a]**
12 **political subdivision [of the state may] thereof shall not enter into or require**

13 a union-only project labor agreement for the procurement of construction
14 services[, except as provided in section 34.209, on a project-by-project basis only
15 if the project is funded fifty percent or less with state funds and only on the
16 condition that:

17 (1) The state or political subdivision must analyze the impact of a
18 union-only project labor agreement and consider:

19 (a) Whether the union-only project labor agreement advances the interests
20 of the public entity and its citizens;

21 (b) Whether the union-only project labor agreement is appropriate
22 considering the complexity, size, cost impact, and need for efficiency on the
23 project;

24 (c) Whether the union-only project labor agreement impacts the
25 availability of a qualified work force; and

26 (d) Whether the scope of the union-only project labor agreement has a
27 business justification for the project as bid;

28 (2) The state or political subdivision shall publish the findings of
29 subdivision (1) of this subsection in a document titled "Intent to Enter Into a
30 Union Project Labor Agreement". The document shall establish a rational basis
31 upon which the state or political subdivision bases its intent to require a
32 union-only project labor agreement for the project;

33 (3) No fewer than fourteen days but not more than thirty days following
34 publication of the notice of a public hearing, the state or political subdivision
35 shall conduct a public hearing on whether to proceed with its intent to require a
36 union-only project labor agreement;

37 (4) Within thirty days of the public hearing set forth in subdivision (3) of
38 this subsection, the state or political subdivision shall publish its determination
39 on whether or not to require a union-only project labor agreement.

40 3. (1) Any interested party may, within thirty days of the determination
41 of the state or political subdivision as set forth in subdivision (4) of subsection 2
42 of this section, appeal to the labor and industrial relations commission for a
43 determination as to whether the state or political subdivision complied with
44 subsection 2 of this section for a union-only project labor agreement as defined
45 in subsection 1 of this section.

46 (2) The labor and industrial relations commission shall consider the
47 appeal in subdivision (1) of this section under a rational basis standard of review.

48 (3) The labor and industrial relations commission shall hold a hearing on

49 the appeal within sixty days of the filing of the appeal. The commission shall
50 issue its decision within ninety days of the filing date of the appeal.

51 (4) Any aggrieved party from the labor and industrial relations
52 commission decision set forth in subdivision (3) of this subsection may file an
53 appeal with the circuit court of Cole County within thirty days of the
54 commission's decision].

34.217. [Notwithstanding the provisions of section 1.140, the provisions
2 of sections 290.095 and 290.250 and sections 34.203 to 34.216 shall not be
3 severable. In the event a court of competent jurisdiction rules that any part of
4 this act is unenforceable, the entire act shall be rendered null and void.] **Any
5 person submitting a bid, or who would have submitted a bid except for
6 violations of this chapter, shall have standing to seek equitable relief
7 and monetary damages in a court of competent jurisdiction for
8 monetary losses resulting from violations of this chapter, including but
9 not limited to, setting aside award of a contract, ordering a contract to
10 be rebid, requiring award of a contract to a different bidder than
11 originally awarded, awarding monetary damages deemed appropriate
12 by the court, including award of reasonable attorney's fees, or
13 awarding a combination of such forms or relief.**

34.218. **Notwithstanding the provisions of section 1.140, the
2 provisions of sections 34.203 to 34.217 shall not be severable. In the
3 event a court of competent jurisdiction rules that any part of this act
4 is unenforceable, the entire act shall be rendered null and void.**

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