

FIRST REGULAR SESSION

SENATE BILL NO. 176

96TH GENERAL ASSEMBLY

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

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TERRY L. SPIELER, Secretary.

0786S.02I

AN ACT

To repeal sections 290.210, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, and to enact in lieu thereof six new sections relating to public construction, with existing penalty provisions.

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

Section A. Sections 290.210, 290.250, 290.260, 290.262, 290.290, and
2 290.340, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 290.210, 290.250, 290.260, 290.262, 290.290, and 290.340, to
4 read as follows:

290.210. As used in sections 290.210 to 290.340, unless the context
2 indicates otherwise:

3 (1) "Construction" includes construction, reconstruction, improvement,
4 enlargement, alteration, painting and decorating, or major repair.

5 (2) "Department" means the department of labor and industrial relations.

6 (3) "Locality" means the county where the physical work upon public
7 works is performed[, except that if there is not available in the county a sufficient
8 number of competent skilled workmen to construct the public works efficiently
9 and properly, "locality" may include two or more counties adjacent to the one in
10 which the work or construction is to be performed and from which such workers
11 may be obtained in sufficient numbers to perform the work, and that, with respect
12 to contracts with the state highways and transportation commission, "locality"
13 may be construed to include two or more adjacent counties from which workmen
14 may be accessible for work on such construction].

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

15 (4) "Maintenance work" means the repair, but not the replacement, of
16 existing facilities when the size, type or extent of the existing facilities is not
17 thereby changed or increased.

18 (5) "Prevailing hourly rate of wages" means the **average rate of wages**
19 paid generally, in the locality in which the public works is being performed, to
20 workmen engaged in work of a similar character including the basic hourly rate
21 of pay and the amount of the rate of contributions [irrevocably made by a
22 contractor or subcontractor to a trustee or] to a [third person pursuant to a] fund,
23 plan or program, and the amount of the rate of costs to the contractor or
24 subcontractor which may be reasonably anticipated in providing benefits to
25 workmen and mechanics pursuant to an enforceable commitment to carry out a
26 financially responsible plan or program which was communicated in writing to
27 the workmen affected, for medical or hospital care, pensions on retirement or
28 death, compensation for injuries or illness resulting from occupational activity,
29 or insurance to provide any of the foregoing, for unemployment benefits, life
30 insurance, disability and sickness insurance, accident insurance, for vacation and
31 holiday pay, for defraying costs of apprenticeship or other similar programs, or
32 for other bona fide fringe benefits, but only where the contractor or subcontractor
33 is not required by other federal or state law to provide any of the benefits;
34 provided, that the obligation of a contractor or subcontractor to make payment in
35 accordance with the prevailing wage determinations of the department, insofar
36 as sections 290.210 to 290.340 are concerned, may be discharged by the making
37 of payments in cash, [by the making of irrevocable] contributions to [trustees or
38 third persons as provided herein, by the assumption of] an enforceable
39 commitment to bear the costs of a plan or program as provided herein, or any
40 combination thereof, where the aggregate of such payments, contributions and
41 costs is not less than the rate of pay plus the other amounts as provided herein.
42 **If the department is unable to determine the prevailing hourly rate of**
43 **wages in a particular locality by means of wage surveys for workmen**
44 **engaged in work of a similar character, the prevailing hourly rate of**
45 **wages for that locality shall be deemed:**

46 (a) **The median hourly wage estimate for the construction and**
47 **extraction occupational code most closely resembling the occupational**
48 **title as published in the latest United States Bureau of Labor Statistics**
49 **published on or before December thirty-first of the year of the survey**
50 **for that respective locality by Metropolitan and Non-Metropolitan Area**

51 **Occupational Employment Wage Estimate; or**

52 **(b) If no such rate can be determined under paragraph (a) of this**
53 **subdivision, the median hourly wage estimate for occupational code 47-**
54 **0000 in the construction and extraction occupational code, published**
55 **in the latest United States Bureau of Labor Statistics publication on or**
56 **before December thirty-first of the year of the survey shall be the**
57 **prevailing wage for such occupational title;**

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

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

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

290.250. 1. Every public body authorized to contract for or construct
2 public works before advertising for bids or undertaking such construction shall
3 request the department to determine the prevailing rates of wages for workmen
4 for the class or type of work called for by the public works, in the locality where
5 the work is to be performed. The department shall determine the prevailing
6 hourly rate of wages in the locality in which the work is to be performed for each
7 type of workman required to execute the contemplated contract and such
8 determination or schedule of the prevailing hourly rate of wages shall be attached
9 to and made a part of the specifications for the work. The public body shall then
10 specify in the resolution or ordinance and in the call for bids for the contract what
11 is the prevailing hourly rate of wages in the locality for each type of workman
12 needed to execute the contract and also the general prevailing rate for legal
13 holiday and overtime work. It shall be mandatory upon the contractor to whom
14 the contract is awarded and upon any subcontractor under him to pay not less
15 than the specified rates to all workmen employed by them in the execution of the
16 contract. The public body awarding the contract shall cause to be inserted in the
17 contract a stipulation to the effect that not less than the prevailing hourly rate
18 of wages shall be paid to all workmen performing work under the contract. The

19 employer shall forfeit as a penalty to the state, county, city and county, city,
20 town, district or other political subdivision on whose behalf the contract is made
21 or awarded one hundred dollars for each workman employed, for each calendar
22 day, or portion thereof, such workman is paid less than the said stipulated rates
23 for any work done under said contract, by him or by any subcontractor under him,
24 and the said public body awarding the contract shall cause to be inserted in the
25 contract a stipulation to this effect. It shall be the duty of such public body
26 awarding the contract, and its agents and officers, to take cognizance of all
27 complaints of all violations of the provisions of sections 290.210 to 290.340
28 committed in the course of the execution of the contract, and, when making
29 payments to the contractor becoming due under said contract, to withhold and
30 retain therefrom all sums and amounts due and owing as a result of any violation
31 of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold
32 from any subcontractor under him sufficient sums to cover any penalties withheld
33 from him by the awarding body on account of said subcontractor's failure to
34 comply with the terms of sections 290.210 to 290.340, and if payment has already
35 been made to him, the contractor may recover from him the amount of the penalty
36 in a suit at law.

37 2. In determining whether a violation of sections 290.210 to 290.340 has
38 occurred, [and whether the penalty under subsection 1 of this section shall be
39 imposed,] it shall be the duty of the department to investigate any claim of
40 violation. Upon completing such investigation, the department shall notify the
41 employer of its findings. If the department concludes that a violation of sections
42 290.210 to 290.340 has occurred and a penalty may be due, the department shall
43 notify the employer of such finding by providing a notice of [penalty] **violation**
44 to the employer. [Such penalty shall not be due until forty-five days after the
45 date of the notice of the penalty.]

46 3. The employer shall have the right to dispute such notice of [penalty]
47 **violation** in writing to the department within forty-five days of the date of the
48 notice. Upon receipt of this written notice of dispute, the department shall notify
49 the employer of the right to resolve such dispute through arbitration. The state
50 and the employer shall submit to an arbitration process to be established by the
51 department by rule, and in conformance with the guidelines and rules of the
52 American Arbitration Association or other arbitration process mutually agreed
53 upon by the employer and the state. If at any time prior to the department
54 pursuing an enforcement action [to enforce the monetary penalty provisions of

55 subsection 1 of this section] against the employer, the employer pays the back
56 wages as determined by either the department or the arbitrator, the department
57 shall be precluded from initiating any enforcement action to impose the monetary
58 penalty provisions of subsection 1 of this section **and no other administrative,**
59 **civil, or criminal action shall be taken against the contractor,**
60 **subcontractor, employee, agent, owner, or principal of the**
61 **employer. Any dispute resolved pursuant to this subsection prior to the**
62 **department initiating an enforcement action shall not be considered a**
63 **violation for the purposes of section 290.330.**

64 4. If the employer fails to pay all wages due as determined by the
65 arbitrator within forty-five days following the conclusion of the arbitration
66 process, or if the employer fails to exercise the right to seek arbitration, the
67 department may then pursue an enforcement action to enforce the monetary
68 penalty provisions of subsection 1 of this section against the employer. If the
69 court orders payment of the penalties as prescribed in subsection 1 of this section,
70 the department shall be entitled to recover its actual cost of enforcement from
71 such penalty amount.

72 5. Nothing in this section shall be interpreted as precluding an action for
73 enforcement filed by an aggrieved employee as otherwise provided in law.

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

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

15 3. At any time within thirty days after the certified copies of the
16 determinations have been filed with the secretary of state and the department,
17 any person who is affected thereby may object in writing to the determination or

18 the part thereof that he deems objectionable by filing a written notice with the
19 department, stating the specific grounds of the objection.

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

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

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

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

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

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

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] To determine the prevailing rates of wages,**
8 **the department shall ascertain [and consider the applicable wage rates**
9 **established by collective bargaining agreements, if any, and] the average of the**
10 **rates that are paid generally within the locality, and shall, by March tenth of**
11 **each year, make an initial determination for each occupational title within the**
12 **locality.**

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

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

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

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

35 6. Within twenty days of the conclusion of the hearing, the department
36 shall rule on the written objection and make the final determination that it
37 believes the evidence warrants. Immediately, the department shall file a certified
38 copy of its final determination with the secretary of state and with the

39 department and shall serve a copy of the final determination on all parties to the
40 proceedings by personal service or by registered mail.

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

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

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

66 10. In addition to all other reporting requirements of sections 290.210 to
67 290.340, each public body which is awarding a contract for a public works project
68 shall, prior to beginning of any work on such public works project, notify the
69 department, on a form prescribed by the department, of the scope of the work to
70 be done, the various types of craftsmen who will be needed on the project, and the
71 date work will commence on the project.

290.290. 1. The contractor and each subcontractor engaged in any
2 construction of public works shall keep full and accurate records clearly
3 indicating the names, occupations and crafts of every workman employed by them

4 in connection with the public work together with an accurate record of the
5 number of hours worked by each workman and the actual wages paid
6 therefor. The payroll records required to be so kept shall be open to inspection
7 by any authorized representative of the contracting public body or of the
8 department at any reasonable time and as often as may be necessary and such
9 records shall not be destroyed or removed from the state for the period of one year
10 following the completion of the public work in connection with which the records
11 are made.

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

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

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

290.340. Any officer, official, member, agent or representative of any
2 public body, contractor or subcontractor who willfully violates and omits to
3 comply with any of the provisions and requirements of sections 290.210 to
4 290.340 shall be punished for each violation thereof by a fine not exceeding five

5 hundred dollars[, or by imprisonment not exceeding six months, or by both such
6 fine and imprisonment]. Each day such violation or omission continues shall
7 constitute a separate offense as contemplated by this section.

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