

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 596

96TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, January 26, 2012, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4925S.02C

AN ACT

To repeal sections 34.209, 34.212, 34.216, 34.217, 290.210, 290.250, 290.262, 290.290, and 290.340, RSMo, and to enact in lieu thereof eleven new sections relating to public contracts, with penalty provisions.

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

Section A. Sections 34.209, 34.212, 34.216, 34.217, 290.210, 290.250, 290.262, 290.290, and 290.340, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 34.207, 34.209, 34.212, 34.216, 34.217, 290.210, 290.250, 290.262, 290.290, 290.337, and 290.340, to read as follows:

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

(1) Require or prohibit bidders, offerors, contractors,

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

12 or subcontractors to enter into or adhere to agreements with
13 one or more labor organizations on the same or related
14 projects; or

15 (2) Discriminate against bidders, offerors,
16 contractors, or subcontractors for entering or refusing to
17 enter or to remain signatory or otherwise adhere to
18 agreements with one or more labor organizations on the same
19 or related construction projects.

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

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

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

14 2. The state, **any agency of the state, or any**
15 **instrumentality, or [a] political subdivision [of the state**

16 may] **thereof shall not** enter into **or require** a union-only
17 project labor agreement for the procurement of construction
18 services[, except as provided in section 34.209, on a
19 project-by-project basis only if the project is funded fifty
20 percent or less with state funds and only on the condition
21 that:

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

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

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

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

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

34 (2) The state or political subdivision shall publish
35 the findings of subdivision (1) of this subsection in a
36 document titled "Intent to Enter Into a Union Project Labor
37 Agreement". The document shall establish a rational basis
38 upon which the state or political subdivision bases its
39 intent to require a union-only project labor agreement for
40 the project;

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

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

50 3. (1) Any interested party may, within thirty days
51 of the determination of the state or political subdivision as
52 set forth in subdivision (4) of subsection 2 of this section,
53 appeal to the labor and industrial relations commission for
54 a determination as to whether the state or political
55 subdivision complied with subsection 2 of this section for a

56 union-only project labor agreement as defined in subsection
57 1 of this section.

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

61 (3) The labor and industrial relations commission shall
62 hold a hearing on the appeal within sixty days of the filing
63 of the appeal. The commission shall issue its decision
64 within ninety days of the filing date of the appeal.

65 (4) Any aggrieved party from the labor and industrial
66 relations commission decision set forth in subdivision (3) of
67 this subsection may file an appeal with the circuit court of
68 Cole County within thirty days of the commission's decision].
69

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

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

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

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

8 (3) "Locality" means the county where the physical work
9 upon public works is performed[, except that if there is not

10 available in the county a sufficient number of competent
11 skilled workmen to construct the public works efficiently and
12 properly, "locality" may include two or more counties
13 adjacent to the one in which the work or construction is to
14 be performed and from which such workers may be obtained in
15 sufficient numbers to perform the work, and that, with
16 respect to contracts with the state highways and
17 transportation commission, "locality" may be construed to
18 include two or more adjacent counties from which workmen may
19 be accessible for work on such construction].

20 (4) "Maintenance work" means the repair, but not the
21 replacement, of existing facilities when the size, type or
22 extent of the existing facilities is not thereby changed or
23 increased.

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

50 cash, by the making of irrevocable contributions to trustees
51 or third persons as provided herein, by the assumption of an
52 enforceable commitment to bear the costs of a plan or program
53 as provided herein, or any combination thereof, where the
54 aggregate of such payments, contributions and costs is not
55 less than the rate of pay plus the other amounts as provided
56 herein]. **The prevailing hourly rate of wages for each**
57 **locality shall be deemed:**

58 (a) **The median hourly wage estimate for the**
59 **construction and extraction occupational code most closely**
60 **resembling the occupational title as published in the latest**
61 **United States Bureau of Labor Statistics by Metropolitan and**
62 **Non-Metropolitan Area Occupational Employment Wage Estimate;**
63 **or**

64 (b) **If no such rate can be determined under paragraph**
65 **(a) of this subdivision, the median hourly wage estimate for**
66 **occupational code 47-0000 in the construction and extraction**
67 **occupational code, published in the latest United States**
68 **Bureau of Labor Statistics publication shall be the**
69 **prevailing wage for such occupational title;**

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

74 (7) "Public works" means all fixed works constructed
75 for public use or benefit or paid for wholly or in part out
76 of public funds. It also includes any work done directly by
77 any public utility company when performed by it pursuant to
78 the order of the public service commission or other public
79 authority whether or not it be done under public supervision
80 or direction or paid for wholly or in part out of public
81 funds when let to contract by said utility. It does not
82 include any work done for or by any drainage or levee
83 district.

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

290.250. 1. Every public body authorized to contract
2 for or construct public works before advertising for bids or
3 undertaking such construction shall request the department to
4 determine the prevailing rates of wages for workmen for the
5 class or type of work called for by the public works, in the

6 locality where the work is to be performed. The department
7 shall determine the prevailing hourly rate of wages in the
8 locality in which the work is to be performed for each type
9 of workman required to execute the contemplated contract and
10 such determination or schedule of the prevailing hourly rate
11 of wages shall be attached to and made a part of the
12 specifications for the work. The public body shall then
13 specify in the resolution or ordinance and in the call for
14 bids for the contract what is the prevailing hourly rate of
15 wages in the locality for each type of workman needed to
16 execute the contract and also the general prevailing rate for
17 legal holiday and overtime work. It shall be mandatory upon
18 the contractor to whom the contract is awarded and upon any
19 subcontractor under him to pay not less than the specified
20 rates to all workmen employed by them in the execution of the
21 contract. The public body awarding the contract shall cause
22 to be inserted in the contract a stipulation to the effect
23 that not less than the prevailing hourly rate of wages shall
24 be paid to all workmen performing work under the contract.
25 The employer shall forfeit as a penalty to the state, county,
26 city and county, city, town, district or other political
27 subdivision on whose behalf the contract is made or awarded
28 one hundred dollars for each workman employed, for each
29 calendar day, or portion thereof, such workman is paid less
30 than the said stipulated rates for any work done under said
31 contract, by him or by any subcontractor under him, and the
32 said public body awarding the contract shall cause to be
33 inserted in the contract a stipulation to this effect. It
34 shall be the duty of such public body awarding the contract,
35 and its agents and officers, to take cognizance of all
36 complaints of all violations of the provisions of sections
37 290.210 to 290.340 committed in the course of the execution
38 of the contract, and, when making payments to the contractor
39 becoming due under said contract, to withhold and retain
40 therefrom all sums and amounts due and owing as a result of
41 any violation of sections 290.210 to 290.340. It shall be
42 lawful for any contractor to withhold from any subcontractor
43 under him sufficient sums to cover any penalties withheld
44 from him by the awarding body on account of said
45 subcontractor's failure to comply with the terms of sections
46 290.210 to 290.340, and if payment has already been made to

47 him, the contractor may recover from him the amount of the
48 penalty in a suit at law.

49 2. In determining whether a violation of sections
50 290.210 to 290.340 has occurred, [and whether the penalty
51 under subsection 1 of this section shall be imposed,] it
52 shall be the duty of the department to investigate any claim
53 of violation. Upon completing such investigation, the
54 department shall notify the employer of its findings. If the
55 department concludes that a violation of sections 290.210 to
56 290.340 has occurred and a penalty may be due, the department
57 shall notify the employer of such finding by providing a
58 notice of [penalty] **violation** to the employer. [Such penalty
59 shall not be due until forty-five days after the date of the
60 notice of the penalty.]

61 3. The employer shall have the right to dispute such
62 notice of [penalty] **violation** in writing to the department
63 within forty-five days of the date of the notice. Upon
64 receipt of this written notice of dispute, the department
65 shall notify the employer of the right to resolve such
66 dispute through arbitration. The state and the employer
67 shall submit to an arbitration process to be established by
68 the department by rule, and in conformance with the
69 guidelines and rules of the American Arbitration Association
70 or other arbitration process mutually agreed upon by the
71 employer and the state. If at any time prior to the
72 department pursuing an enforcement action [to enforce the
73 monetary penalty provisions of subsection 1 of this section]
74 against the employer, the employer pays the back wages as
75 determined by either the department or the arbitrator, the
76 department shall be precluded from initiating any enforcement
77 action to impose the monetary penalty provisions of
78 subsection 1 of this section **and no other administrative,**
79 **civil, or criminal action shall be taken against the**
80 **contractor, subcontractor, employee, agent, owner, or**
81 **principal of the employer. Any dispute resolved pursuant to**
82 **this subsection prior to the department initiating an**
83 **enforcement action shall not be considered a violation for**
84 **the purposes of section 290.330.**

85 4. If the employer fails to pay all wages due as
86 determined by the arbitrator within forty-five days following

87 the conclusion of the arbitration process, or if the employer
88 fails to exercise the right to seek arbitration, the
89 department may then pursue an enforcement action to enforce
90 the monetary penalty provisions of subsection 1 of this
91 section against the employer. If the court orders payment of
92 the penalties as prescribed in subsection 1 of this section,
93 the department shall be entitled to recover its actual cost
94 of enforcement from such penalty amount.

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

290.262. 1. [Except as otherwise provided in section
2 290.260, the department shall annually investigate and
3 determine the prevailing hourly rate of wages in each
4 locality for each separate occupational title.] A final
5 determination applicable to every locality to be contained in
6 an annual wage order shall be made annually on or before July
7 first of each year and shall remain in effect until
8 superseded by a new annual wage order or as otherwise
9 provided in this section. [In determining prevailing rates,
10 the department shall ascertain and consider the applicable
11 wage rates established by collective bargaining agreements,
12 if any, and the rates that are paid generally within the
13 locality, and shall, by March tenth of each year, make an
14 initial determination for each occupational title within the
15 locality.]

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

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

29 4. After the receipt of the objection, the department

30 shall set a date for a hearing on the objection. The date
31 for the hearing shall be within sixty days of the receipt of
32 the objection. Written notice of the time and place of the
33 hearing shall be given to the objectors at least ten days
34 prior to the date set for the hearing.

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

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

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

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

67 9. [Any annual wage order made for a particular
68 occupational title in a locality may be altered once each
69 year, as provided in this subsection. The prevailing wage
70 for each such occupational title may be adjusted on the

71 anniversary date of any collective bargaining agreement which
72 covers all persons in that particular occupational title in
73 the locality in accordance with any annual incremental wage
74 increases set in the collective bargaining agreement. If the
75 prevailing wage for an occupational title is adjusted
76 pursuant to this subsection, the employee's representative or
77 employer in regard to such collective bargaining agreement
78 shall notify the department of this adjustment, including the
79 effective date of the adjustment. The adjusted prevailing
80 wage shall be in effect until the next final annual wage
81 order is issued pursuant to this section.] The wage rates for
82 any particular job, contracted and commenced within sixty
83 days of the contract date, which were set as a result of the
84 annual [or revised] wage order, shall remain in effect for
85 the duration of that particular job.

86 10. In addition to all other reporting requirements of
87 sections 290.210 to 290.340, each public body which is
88 awarding a contract for a public works project shall, prior
89 to beginning of any work on such public works project, notify
90 the department, on a form prescribed by the department, of
91 the scope of the work to be done, the various types of
92 craftsmen who will be needed on the project, and the date
93 work will commence on the project.

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

14 2. Each contractor and subcontractor shall file with
15 the contracting public body upon completion of the public
16 work and prior to final payment therefor an affidavit stating
17 that he had fully complied with the provisions and

18 requirements of this chapter, and no public body shall be
19 authorized to make final payment until such affidavit is
20 filed therewith in proper form and order.

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

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

**290.337. Sections 290.210 to 290.340 shall not apply
2 in any county that receives federal disaster assistance under
3 a federal disaster declaration for public works projects
4 undertaken as a result of the disaster.**

290.340. Any officer, official, member, agent or
2 representative of any public body, contractor or subcontractor
3 who willfully violates and omits to comply with any of the
4 provisions and requirements of sections 290.210 to 290.340
5 shall be punished for each violation thereof by a fine not
6 exceeding five hundred dollars[, or by imprisonment not
7 exceeding six months, or by both such fine and imprisonment].
8 Each day such violation or omission continues shall

9 constitute a separate offense as contemplated by this
10 section.

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