

FIRST REGULAR SESSION

# SENATE BILL NO. 68

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Pre-filed December 10, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0235S.011

## AN ACT

To repeal sections 290.210 and 290.262, RSMo, and to enact in lieu thereof two new sections relating to prevailing wage determinations for third class counties.

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

Section A. Sections 290.210 and 290.262, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 290.210 and 290.262, to  
3 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.

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":

19 **(a) In a county of the third classification, the prevailing hourly**

20 **rate of wages for such locality shall be deemed:**

21 **a. The median hourly wage estimate for the construction and**  
22 **extraction occupational code most closely resembling the occupational**  
23 **title as published in the latest United States Bureau of Labor Statistics**  
24 **by Metropolitan and Non-Metropolitan Area Occupational Employment**  
25 **Wage Estimate; or**

26 **b. If no such rate can be determined under subparagraph a of**  
27 **this paragraph, the median hourly wage estimate for occupational code**  
28 **47-0000 in the construction and extraction occupational code, published**  
29 **in the latest United States Bureau of Labor Statistics publication shall**  
30 **be the prevailing wage for such occupational title.**

31 **(b) In all other areas not included in paragraph (a) of this**  
32 **subdivision, "prevailing hourly rate of wages" means the wages paid**  
33 **generally, in the locality in which the public works is being performed, to**  
34 **workmen engaged in work of a similar character including the basic hourly rate**  
35 **of pay and the amount of the rate of contributions irrevocably made by a**  
36 **contractor or subcontractor to a trustee or to a third person pursuant to a fund,**  
37 **plan or program, and the amount of the rate of costs to the contractor or**  
38 **subcontractor which may be reasonably anticipated in providing benefits to**  
39 **workmen and mechanics pursuant to an enforceable commitment to carry out a**  
40 **financially responsible plan or program which was communicated in writing to**  
41 **the workmen affected, for medical or hospital care, pensions on retirement or**  
42 **death, compensation for injuries or illness resulting from occupational activity,**  
43 **or insurance to provide any of the foregoing, for unemployment benefits, life**  
44 **insurance, disability and sickness insurance, accident insurance, for vacation and**  
45 **holiday pay, for defraying costs of apprenticeship or other similar programs, or**  
46 **for other bona fide fringe benefits, but only where the contractor or subcontractor**  
47 **is not required by other federal or state law to provide any of the benefits;**  
48 **provided, that the obligation of a contractor or subcontractor to make payment in**  
49 **accordance with the prevailing wage determinations of the department, insofar**  
50 **as sections 290.210 to 290.340 are concerned, may be discharged by the making**  
51 **of payments in cash, by the making of irrevocable contributions to trustees or**  
52 **third persons as provided herein, by the assumption of an enforceable**  
53 **commitment to bear the costs of a plan or program as provided herein, or any**  
54 **combination thereof, where the aggregate of such payments, contributions and**  
55 **costs is not less than the rate of pay plus the other amounts as provided herein.**

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

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

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

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 prevailing rates **pursuant to paragraph (b) of**  
8 **subdivision (5) of section 290.210**, the department shall ascertain and  
9 consider the applicable wage rates established by collective bargaining  
10 agreements, if any, and the rates that are paid generally within the locality, and  
11 shall, by March tenth of each year, make an initial determination for each  
12 occupational title within the 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. **For prevailing wages determined pursuant to paragraph (b) of**  
53 **subdivision (5) of section 290.210**, any annual wage order made for a  
54 particular occupational title in a locality may be altered once each year, as  
55 provided in this subsection. The prevailing wage for each such occupational title  
56 may be adjusted on the anniversary date of any collective bargaining agreement  
57 which covers all persons in that particular occupational title in the locality in  
58 accordance with any annual incremental wage increases set in the collective  
59 bargaining agreement. If the prevailing wage for an occupational title is adjusted  
60 pursuant to this subsection, the employee's representative or employer in regard  
61 to such collective bargaining agreement shall notify the department of this

62 adjustment, including the effective date of the adjustment. The adjusted  
63 prevailing wage shall be in effect until the next final annual wage order is issued  
64 pursuant to this section. The wage rates for any particular job, contracted and  
65 commenced within sixty days of the contract date, which were set as a result of  
66 the annual or revised wage order, shall remain in effect for the duration of that  
67 particular job.

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

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Bill

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