

SENATE SUBSTITUTE

FOR

HOUSE BILL NO. 104

AN ACT

To repeal sections 290.210, 290.220, 290.230, 290.260, and 290.262, RSMo, and to enact in lieu thereof four new sections relating to public contracts.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1           Section A. Sections 290.210, 290.220, 290.230, 290.260, and  
2 290.262, RSMo, are repealed and four new sections enacted in lieu  
3 thereof, to be known as sections 290.210, 290.220, 290.230, and  
4 290.260, to read as follows:

5           290.210. As used in sections 290.210 to 290.340, unless the  
6 context indicates otherwise:

7           (1) ["Adjacent county", any Missouri county of the third or  
8 fourth classification having a boundary that, at any point,  
9 touches any boundary of the locality for which the wage rate is  
10 being determined;

11           (2)] "Collective bargaining agreement" means any written  
12 agreement or understanding between an employer or employer  
13 association and a labor organization or union which is the  
14 exclusive bargaining representative of the employer's or employer  
15 association's employees pursuant to the terms of the National  
16 Labor Relations Act and which agreement or understanding or  
17 predecessor agreement or understanding has been used to determine  
18 an occupational title wage rate;

19           [(3)] (2) "Construction" includes construction,

1 reconstruction, improvement, enlargement, alteration, painting  
2 and decorating, or major repair;

3 [(4)] (3) "Department" means the department of labor and  
4 industrial relations;

5 [(5)] (4) "Labor organization" or "union" means any entity  
6 which has been designated pursuant to the terms of the National  
7 Labor Relations Act as the exclusive bargaining representative of  
8 employees of employers engaged in the construction industry,  
9 which entity or affiliated entity has ever had a collective  
10 bargaining agreement which determined an occupational title wage  
11 rate;

12 [(6)] (5) "Locality" means the county where the physical  
13 work upon public works is performed;

14 [(7)] (6) "Maintenance work" means the repair, but not the  
15 replacement, of existing facilities when the size, type or extent  
16 of the existing facilities is not thereby changed or increased;

17 [(8)] (7) "Prevailing Hourly rate of wages" means, the  
18 wages paid generally, in the locality in which the public works  
19 is being performed, to workmen [engaged in work of a similar  
20 character] including the basic hourly rate of pay and the amount  
21 of the rate of contributions irrevocably made to a fund, plan or  
22 program, and the amount of the rate of costs to the contractor or  
23 subcontractor which may be reasonably anticipated in providing  
24 benefits to workmen and mechanics pursuant to an enforceable  
25 commitment to carry out a financially responsible plan or program  
26 which was communicated in writing to the workmen affected, for  
27 medical or hospital care, pensions on retirement or death,  
28 compensation for injuries or illness resulting from occupational

1 activity, or insurance to provide any of the foregoing, for  
2 unemployment benefits, life insurance, disability and sickness  
3 insurance, accident insurance, for vacation and holiday pay, for  
4 defraying costs of apprenticeship or other similar programs, or  
5 for other bona fide fringe benefits, but only where the  
6 contractor or subcontractor is not required by other federal or  
7 state law to provide any of the benefits; provided, that the  
8 obligation of a contractor or subcontractor to make payment in  
9 accordance with the prevailing wage determinations of the  
10 department, insofar as sections 290.210 to 290.340 are concerned,  
11 may be discharged by the making of payments in cash, by the  
12 making of irrevocable contributions by the assumption of an  
13 enforceable commitment to bear the costs of a plan or program as  
14 provided herein, or any combination thereof, where the aggregate  
15 of such payments, contributions and costs is not less than the  
16 rate of pay plus the other amounts as provided herein;

17 [(9) "Previous six annual wage order reporting periods"  
18 means the current annual wage order reporting period under  
19 consideration for wage rate determinations and the five  
20 immediately preceding annual wage order reporting periods;

21 (10) ] (8) "Public body" means the state of Missouri or any  
22 officer, official, authority, board or commission of the state,  
23 or other political subdivision thereof, or any institution  
24 supported in whole or in part by public funds;

25 [(11) ] (9) "Public works" means all fixed works constructed  
26 for public use or benefit or paid for wholly or in part out of  
27 public funds. It also includes any work done directly by any  
28 public utility company when performed by it pursuant to the order

1 of the public service commission or other public authority  
2 whether or not it be done under public supervision or direction  
3 or paid for wholly or in part out of public funds when let to  
4 contract by said utility. It does not include any work done for  
5 or by any drainage or levee district;

6 [(12)] (10) "Workmen" means laborers, workmen and mechanics.

7 290.220. It is hereby declared to be the policy of the  
8 state of Missouri that a wage of no less than the prevailing  
9 hourly rate of wages for work [of a similar character] in the  
10 locality in which the work is performed shall be paid to all  
11 workmen employed by or on behalf of any public body engaged in  
12 public works exclusive of maintenance work.

13 290.230. 1. Not less than the prevailing hourly rate of  
14 wages for work [of a similar character] in the locality in which  
15 the work is performed, and not less than the prevailing hourly  
16 rate of wages for legal holiday and overtime work, shall be paid  
17 to all workmen employed by or on behalf of any public body  
18 engaged in the construction of public works, exclusive of  
19 maintenance work. Only such workmen as are directly employed by  
20 contractors or subcontractors in actual construction work on the  
21 site of the building or construction job shall be deemed to be  
22 employed upon public works. Any such workman who agrees in  
23 writing to volunteer his or her labor without pay shall not be  
24 deemed to be employed upon public works, and shall not be  
25 entitled to the prevailing hourly rate of wages. For the  
26 purposes of this section, the term "workman who agrees in writing  
27 to volunteer his or her labor without pay" shall mean a workman  
28 who volunteers his or her labor without any promise of benefit or

1 remuneration for such voluntary activity, and who is not a  
2 prisoner in any jail or prison facility and who is not performing  
3 community service pursuant to disposition of a criminal case  
4 against him, and is not otherwise employed for compensation at  
5 any time in the construction or maintenance work on the same  
6 public works for which the workman is a volunteer. Under no  
7 circumstances may an employer force, compel or otherwise  
8 intimidate an employee into performing work otherwise paid by a  
9 prevailing wage as a volunteer.

10 2. When the hauling of materials or equipment includes some  
11 phase of construction other than the mere transportation to the  
12 site of the construction, workmen engaged in this dual capacity  
13 shall be deemed employed directly on public works.

14 3. The provisions of sections 290.210 to 290.340 shall not  
15 apply to the construction of public works for which the contract  
16 awarded is in the amount of five hundred thousand dollars or  
17 less.

18 290.260. 1. The department, as it deems necessary, shall  
19 from time to time investigate and determine the prevailing hourly  
20 rate of wages [for heavy and highway construction work] in the  
21 localities. [In doing so, the department shall accept and  
22 consider information regarding local wage rates that is submitted  
23 in either paper or electronic formats.] A determination  
24 applicable to every locality to be contained in a general wage  
25 order shall be made annually on or before July first of each year  
26 [for the Missouri state highways and transportation commission]  
27 and shall remain in effect until superseded by a new general wage  
28 order. In determining prevailing rates, the department shall

1 ascertain [and consider the applicable wage rates established by  
2 collective bargaining agreements, if any, and the rates that are  
3 paid generally within the locality] the average hourly wages in  
4 each locality as determined by the Missouri economic research and  
5 information center within the department of economic development.  
6 The prevailing hourly rate of wages in each locality shall be  
7 equivalent to the average hourly wages in each locality.

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

13 3. At any time within thirty days after the certified  
14 copies of the determinations have been filed with the secretary  
15 of state and the department, any person who is affected thereby  
16 may object in writing to the determination or the part thereof  
17 that he deems objectionable by filing a written notice with the  
18 department, stating the specific grounds of the objection.

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

25 5. The department at its discretion may hear each written  
26 objection separately or consolidate for hearing any two or more  
27 written objections. At the hearing the department shall first  
28 introduce in evidence the investigation it instituted and the

1 other facts which were considered at the time of the original  
2 determination which formed the basis for its determination. The  
3 department, or the objector, or any interested party, thereafter  
4 may introduce any evidence that is material to the issues.

5 6. Within twenty days of the conclusion of the hearing, the  
6 department must rule on the written objection and make the final  
7 determination that it believes the evidence warrants.

8 Immediately, the department shall file a certified copy of its  
9 final determination with the secretary of state and with the  
10 department and shall serve a copy of the final determination on  
11 all parties to the proceedings by personal service or by  
12 registered mail.

13 7. This final decision of the department of the prevailing  
14 wages in the locality is subject to review in accordance with the  
15 provisions of chapter 536. Any person affected, whether or not  
16 the person participated in the proceedings resulting in the final  
17 determination, may have the decision of the department reviewed.  
18 The filing of the final determination with the secretary of state  
19 shall be considered a service of the final determination on  
20 persons not participating in the administrative proceedings  
21 resulting in the final determination.

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

26 9. All proceedings in any court affecting a determination  
27 of the department under the provisions of sections 290.210 to  
28 290.340 shall have priority in hearing and determination over all

1 other civil proceedings pending in the court, except election  
2 contests.

3 [290.262. 1. Except as otherwise provided in  
4 section 290.260, the department shall annually  
5 determine the prevailing hourly rate of wages in each  
6 locality for each separate occupational title. In  
7 doing so, the department shall accept and consider  
8 information regarding local wage rates that is  
9 submitted in either paper or electronic formats. A  
10 final determination applicable to every locality to be  
11 contained in an annual wage order shall be made  
12 annually on or before July first of each year and shall  
13 remain in effect until superseded by a new annual wage  
14 order or as otherwise provided in this section. The  
15 department shall, by March tenth of each year, make an  
16 initial determination for each occupational title  
17 within the locality.

18 2. The prevailing wage rate for an occupational  
19 title in a locality shall, with the exception of  
20 localities that are counties of the third and fourth  
21 classification and any county of the second  
22 classification with more than fifty-eight thousand but  
23 fewer than sixty-five thousand inhabitants, be the wage  
24 rate most commonly paid, as measured by the number of  
25 hours worked at each wage rate, for that occupational  
26 title within that locality. In determining such  
27 prevailing wage rates, the department shall ascertain  
28 and consider the applicable wage rates established by  
29 collective bargaining agreements, if any, when no wages  
30 were reported.

31 3. With respect only to localities that are  
32 counties of the third and fourth classification and any  
33 county of the second classification with more than  
34 fifty-eight thousand but fewer than sixty-five thousand  
35 inhabitants, the prevailing wage rate for an  
36 occupational title within such locality shall be  
37 determined in the following manner:

38 (1) The total number of hours worked that are not  
39 paid pursuant to a collective bargaining agreement for  
40 the time period in that occupational title in the  
41 locality and the total number of hours worked that are  
42 paid pursuant to a collective bargaining agreement for  
43 the time period in that occupational title in the  
44 locality shall be considered;

45 (2) If the total number of hours that are not  
46 paid pursuant to a collective bargaining agreement, in  
47 the aggregate, exceeds the total number of hours that  
48 are paid pursuant to such an agreement, in the  
49 aggregate, then the prevailing wage rate shall be the



1 rate most commonly paid that is not paid pursuant to a  
2 collective bargaining agreement as measured by the  
3 number of hours worked at such rate for that  
4 occupational title within the locality;

5 (3) If the total number of hours that are paid  
6 pursuant to a collective bargaining agreement, in the  
7 aggregate, exceeds the total number of hours that are  
8 not paid pursuant to such an agreement, in the  
9 aggregate, then the prevailing wage rate shall be the  
10 rate most commonly paid that is paid pursuant to a  
11 collective bargaining agreement as measured by the  
12 number of hours worked at such rate for that  
13 occupational title within the locality;

14 (4) If no work within a particular occupational  
15 title has been performed in a locality at any wage  
16 rate, the prevailing wage rate for that occupational  
17 title in that locality shall be determined in the  
18 following manner:

19 (a) If wages were reported for an occupational  
20 title within a locality within the previous six annual  
21 wage order reporting periods and the prevailing wage  
22 rate was determined by a collective bargaining  
23 agreement by hours worked pursuant to such agreement in  
24 the most recent annual wage order reporting period  
25 where such wages were reported, then the wage rate paid  
26 pursuant to the current collective bargaining agreement  
27 shall be the prevailing rate for that occupational  
28 title within the locality;

29 (b) If wages were reported for an occupational  
30 title within a locality within the previous six annual  
31 wage order reporting periods and the prevailing wage  
32 rate was not determined by hours worked pursuant to a  
33 collective bargaining agreement in the most recent  
34 annual wage order reporting period where such wages  
35 were reported, then the wage rate paid in the most  
36 recent annual wage order reporting period when such  
37 wages were reported shall be the prevailing wage rate  
38 for that occupational title within the locality;

39 (c) If no wages were reported for an occupational  
40 title within a locality within the previous six annual  
41 wage order reporting periods, the department shall  
42 examine hours and wages reported in all adjacent  
43 Missouri counties during the same periods. The most  
44 recent reported wage rate in a given wage order period  
45 in the adjacent Missouri county with the most reported  
46 hours actually worked for that occupational title in  
47 the wage period during the previous six annual wage  
48 order reporting periods shall be used to determine the  
49 prevailing wage rate;

50 (d) If no wages were reported for an occupational  
51 title within any adjacent Missouri county within the

1 previous six annual wage order reporting periods, then  
2 the rate paid pursuant to the current collective  
3 bargaining agreement shall be the prevailing wage rate  
4 for that occupational title within the locality.

5 4. A certified copy of the initial determinations  
6 so made shall be filed immediately with the secretary  
7 of state and with the department in Jefferson City.  
8 Copies shall be supplied by the department to all  
9 persons requesting them within ten days after the  
10 filing.

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

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

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

37 8. Within twenty days of the conclusion of the  
38 hearing, the department shall rule on the written  
39 objection and make the final determination that it  
40 believes the evidence warrants. Immediately, the  
41 department shall file a certified copy of its final  
42 determination with the secretary of state and with the  
43 department and shall serve a copy of the final  
44 determination on all parties to the proceedings by  
45 personal service or by registered mail.

46 9. This final decision of the department of the  
47 prevailing wages in the locality for each occupational  
48 title is subject to review in accordance with the  
49 provisions of chapter 536. Any person affected,  
50 whether or not the person participated in the  
51 proceedings resulting in the final determination, may

1 have the decision of the department reviewed. The  
2 filing of the final determination with the secretary of  
3 state shall be considered a service of the final  
4 determination on persons not participating in the  
5 administrative proceedings resulting in the final  
6 determination.

7 10. At any time before trial any person affected  
8 by the final determination of the department may  
9 intervene in the proceedings to review under chapter  
10 536 and be made a party to the proceedings.

11 11. Any annual wage order made for a particular  
12 occupational title in a locality, that is based on the  
13 number of hours worked under a collective bargaining  
14 agreement, may be altered once each year, as provided  
15 in this subsection. The prevailing wage for each such  
16 occupational title may be adjusted on the anniversary  
17 date of any collective bargaining agreement which  
18 covers all persons in that particular occupational  
19 title in the locality in accordance with any annual  
20 incremental wage increases set in the collective  
21 bargaining agreement. If the prevailing wage for an  
22 occupational title is adjusted pursuant to this  
23 subsection, the employee's representative or employer  
24 in regard to such collective bargaining agreement shall  
25 notify the department of this adjustment, including the  
26 effective date of the adjustment. The adjusted  
27 prevailing wage shall be in effect until the next final  
28 annual wage order is issued pursuant to this section.  
29 The wage rates for any particular job, contracted and  
30 commenced within sixty days of the contract date, which  
31 were set as a result of the annual or revised wage  
32 order, shall remain in effect for the duration of that  
33 particular job.

34 12. In addition to all other reporting  
35 requirements of sections 290.210 to 290.340, each  
36 public body which is awarding a contract for a public  
37 works project shall, prior to beginning of any work on  
38 such public works project, notify the department, on a  
39 form prescribed by the department, of the scope of the  
40 work to be done, the various types of craftsmen who  
41 will be needed on the project, and the date work will  
42 commence on the project.]

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