SECOND REGULAR SESSION

SENATE BILL NO. 609

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4550S.01I

AN ACT

To repeal sections 8.675, 8.683, 34.217, 89.410, 285.500, 290.095, 290.210, 290.220, 290.230, 290.240, 290.250, 290.260, 290.262, 290.263, 290.265, 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330, 290.335, 290.340, 290.550, 292.630, 393.715, 516.130, and 630.546, 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 8.675, 8.683, 34.217, 89.410, 285.500, 290.095,
2 290.210, 290.220, 290.230, 290.240, 290.250, 290.260, 290.262, 290.263, 290.265,
3 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330,
4 290.335, 290.340, 290.550, 292.630, 393.715, 516.130, and 630.546, RSMo, are
5 repealed and eleven new sections enacted in lieu thereof, to be known as sections
6 8.675, 8.683, 34.217, 89.410, 285.500, 290.095, 290.550, 292.630, 393.715, 516.130,
7 and 630.546, to read as follows:

8.675. As used in sections 8.675 to 8.687, the following terms mean:

2 (1) "Construction management services" includes:

3 (a) Services provided in the planning and design phases of the project
4 including, but not limited to, consulting with, advising, assisting and making
5 recommendations to the public owner and architect, engineer or registered
6 landscape architect on all aspects of planning for project construction; reviewing
7 all plans and specifications as they are being developed and making
8 recommendations with respect to construction feasibility, availability of material
9 and labor, time requirements for procurement and construction, and projected
10 costs; making, reviewing and refining budget estimates based on the public

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

owner's program and other available information; making recommendations to the public owner and the architect or engineer regarding the division of work in the plans and specifications to facilitate the bidding and awarding of contracts; soliciting the interest of capable contractors and assisting the owner in taking bids on the project; analyzing the bids received and awarding contracts; and preparing and monitoring a progress schedule during the design phase of the project and preparation of a proposed construction schedule; and

(b) Services provided in the construction phase of the project including, but not limited to, maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the project; observing the work as it is being performed for general conformance with working drawings and specifications; establishing procedures for coordinating among the public owner, architect or engineer, contractors and construction manager with respect to all aspects of the project and implementing such procedures; maintaining job site records and making appropriate progress reports; implementing labor policy in conformance with the requirements of the public owner; reviewing the safety and equal opportunity programs of each contractor for conformance with the public owner's policy and making recommendations; reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract; making recommendations for and processing requests for changes in the work and maintaining records of change orders; scheduling and conducting job meetings to ensure orderly progress of the work; developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors and providing periodic status reports to the owner and the architect or engineer; and, establishing and maintaining a cost control system and conducting meetings to review costs;

(2) "Construction manager", any person providing construction management services for a public owner;

(3) "Public owner", **[**any public body, as defined in section 290.210**] the state of Missouri or any other officer, official, authority, board, or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds**.

8.683. Upon award of a construction management services contract, the successful construction manager shall contract with the public owner to furnish his skill and judgment in cooperation with, and reliance upon, the services of the

project architect or engineer. The construction manager shall furnish business administration, management of the construction process and other specified services to the public owner and shall perform in an expeditious and economical manner consistent with the interest of the public owner. Should the public owner determine it to be in the public's best interest, the construction manager may provide or perform basic services for which reimbursement is provided in the general conditions to the construction management services contract. The construction manager shall not, however, be permitted to bid on or perform any of the actual construction on a public works project in which he is acting as construction manager, nor shall any construction firm which controls, is controlled by, or shares common ownership or control with, the construction manager be allowed to bid on or perform work on such project. The actual construction work on the project shall be awarded by competitive bidding as provided by law. All successful bidders shall contract directly with the public owner, but shall perform at the direction of the construction manager unless otherwise provided in the construction manager's contract with the public owner. All successful bidders shall provide payment and performance bonds to the public owner. **[**All successful bidders shall meet all the obligations of a prime contractor to whom a contract is awarded, pertaining to the payment of prevailing wages pursuant to sections 290.210 to 290.340.**]** In addition, all nonresident employers shall meet the bonding and registration requirements of sections 285.230 to 285.234.

34.217. Notwithstanding the provisions of section 1.140, the provisions of **[**sections**] section** 290.095 **[**and 290.250**]** and sections 34.203 to **[**34.216**] 34.217** shall not be severable. In the event a court of competent jurisdiction rules that any part of this act is unenforceable, the entire act shall be rendered null and void.

89.410. 1. The planning commission shall recommend and the council may by ordinance adopt regulations governing the subdivision of land within its jurisdiction. The regulations, in addition to the requirements provided by law for the approval of plats, may provide requirements for the coordinated development of the city, town or village; for the coordination of streets within subdivisions with other existing or planned streets or with other features of the city plan or official map of the city, town or village; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and traffic; provided that, the city, town or village may only impose requirements for the posting of bonds,

letters of credit or escrows for subdivision-related improvements as provided for in subsections 2 to 5 of this section.

2. The regulation may include requirements as to the extent and the manner in which the streets of the subdivision or any designated portions thereto shall be graded and improved as well as including requirements as to the extent and manner of the installation of all utility facilities. Compliance with all of these requirements is a condition precedent to the approval of the plat. The regulations or practice of the council may provide for the tentative approval of the plat previous to the improvements and utility installations; but any tentative approval shall not be entered on the plat. The regulations may provide that, in lieu of the completion of the work and installations previous to the final approval of a plat, the council shall accept, at the option of the developer, an escrow secured with cash or an irrevocable letter of credit deposited with the city, town, or village. The city, town, or village may accept a surety bond, and such bond shall be in an amount and with surety and other reasonable conditions, providing for and securing the actual construction and installation of the improvements and utilities within a period specified by the council and expressed in the bond. The release of any such escrow, letter of credit, or bond by the city, town or village shall be as specified in this section. The council may enforce the escrow or bond by all appropriate legal and equitable remedies. The regulations may provide, in lieu of the completion of the work and installations previous to the final approval of a plat, for an assessment or other method whereby the council is put in an assured position to do the work and make the installations at the cost of the owners of the property within the subdivision. The regulations may provide for the dedication, reservation or acquisition of lands and open spaces necessary for public uses indicated on the city plan and for appropriate means of providing for the compensation, including reasonable charges against the subdivision, if any, and over a period of time and in a manner as is in the public interest.

3. The regulations shall provide that in the event a developer who has posted an escrow, or letter of credit, or bond with a city, town, or village in accordance with subsection 2 of this section transfers title of the subdivision property prior to full release of the escrow, letter of credit, or bond, the municipality shall accept a replacement escrow or letter of credit from the successor developer in the form allowed in subsection 2 of this section and in the amount of the escrow or letter of credit held by the city, town, or village at the time of the property transfer, and upon receipt of the replacement escrow or letter

of credit, the city, town, or village shall release the original escrow or letter of credit in full and release the prior developer from all further obligations with respect to the subdivision improvements if the successor developer assumes all of the outstanding obligations of the previous developer. The city, town, or village may accept a surety bond from the successor developer in the form allowed in subsection 2 of this section and in the amount of the bond held by the city, town, or village at the time of the property transfer, and upon receipt of the replacement bond, the city, town, or village shall release the original bond in full, and release the prior developer from all further obligations with respect to the subdivision improvements.

4. The regulations shall provide that any escrow or bond amount held by the city, town or village to secure actual construction and installation on each component of the improvements or utilities shall be released within thirty days of completion of each category of improvement or utility work to be installed, minus a maximum retention of five percent which shall be released upon completion of all improvements and utility work. The city, town, or village shall inspect each category of improvement or utility work within twenty business days after a request for such inspection. Any such category of improvement or utility work shall be deemed to be completed upon certification by the city, town or village that the project is complete in accordance with the ordinance of the city, town or village including the filing of all documentation and certifications required by the city, town or village, in complete and acceptable form. The release shall be deemed effective when the escrow funds or bond amount are duly posted with the United States Postal Service or other agreed-upon delivery service or when the escrow funds or bond amount are hand delivered to an authorized person or place as specified by the owner or developer.

5. If the city, town or village has not released the escrow funds or bond amount within thirty days as provided in this section or provided a timely inspection of the improvements or utility work after request for such inspection, the city, town or village shall pay the owner or developer in addition to the escrow funds due the owner or developer, interest at the rate of one and one-half percent per month calculated from the expiration of the thirty-day period until the escrow funds or bond amount have been released. Any owner or developer aggrieved by the city's, town's or village's failure to observe the requirements of this section may bring a civil action to enforce the provisions of this section. In any civil action or part of a civil action brought pursuant to this section, the court

may award the prevailing party or the city, town or village the amount of all costs attributable to the action, including reasonable attorneys' fees.

6. Nothing in this section shall apply to performance, maintenance and payment bonds required by cities, towns or villages.

7. Before adoption of its subdivision regulations or any amendment thereof, a duly advertised public hearing thereon shall be held by the council.

8. The provisions of subsection 2 of this section requiring the acceptance of an escrow secured by cash or an irrevocable letter of credit, rather than a surety bond, at the option of the developer, all of the provisions of subsection 3 of this section, and the provisions of subsections 4 and 5 of this section regarding an inspection of improvements or utility work within twenty business days shall not apply to any home rule city with more than four hundred thousand inhabitants and located in more than one county.

[9. Notwithstanding the provisions of section 290.210 to the contrary, improvements secured by escrow, letter of credit, or bond as provided in this section shall not be subject to the terms of sections 290.210 to 290.340 unless they are paid for wholly or in part out of public funds.**]**

285.500. For the purposes of sections 285.500 to 285.515 the following terms mean:

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.;

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works **[**as defined in section 290.210**]**;

(3) "Knowingly", a person acts knowingly or with knowledge:

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result**;**

(4) "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. It also includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other

public authority whether or not it is done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by the utility. It does not include any work done for or by any drainage or levee district.

290.095. **[**1. No contractor or subcontractor may directly or indirectly receive a wage subsidy, bid supplement, or rebate for employment on a public works project if such wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by the employer on a given occupational title below the prevailing wage rate as provided in section 290.262.

2. In the event**] If a contractor or subcontractor directly or indirectly receives** a wage subsidy, bid supplement, or rebate **[**is lawfully provided or received under subsections 1 or 2 of this section**] for employment on a public works project**, the entity receiving such subsidy, supplement, or rebate shall report the date and amount of such subsidy, supplement, or rebate to the public body within thirty days of receipt of payment. This disclosure report shall be a matter of public record under chapter 610.

[3. Any employer in violation of this section shall owe to the public body double the dollar amount per hour that the wage subsidy, bid supplement, or rebate has reduced the wage rate paid by the employer below the prevailing wage rate as provided in section 290.262 for each hour that work was performed. It shall be the duty of the department to calculate the dollar amount owed to the public body under this section.**]**

290.550. As used in sections 290.550 to 290.580, the following terms mean:

(1) "Laborers from nonrestrictive states", persons who are residents of a state which has not enacted state laws restricting Missouri laborers from working on public works projects in that state, as determined by the labor and industrial relations commission;

(2) "Missouri laborer", any person who has resided in Missouri for at least thirty days and intends to become or remain a Missouri resident;

(3) "A period of excessive unemployment", any month immediately following two consecutive calendar months during which the level of unemployment in the state has exceeded five percent as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures;

(4) "Public works", **[**projects defined as public works pursuant to section

290.210**] all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. It also includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it is done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by the utility. It does not include any work done for or by any drainage or levee district**.

292.630. 1. At all construction projects at which twenty people or more are engaged in the performance of work, the primary employer or contractor at such project shall provide at least one portable toilet for each twenty people; except that, the provisions of this section shall not apply to any railroad company.

2. The provisions of this section shall be enforced by the department of labor and industrial relations through the division of labor standards. Upon a finding by a court of competent jurisdiction that a primary employer or contractor has willfully violated or omitted to comply with the requirements of this section, such person or persons shall be **[**subject to penalty as provided by section 290.340**] punished for each violation thereof by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day such violation or omission continues shall constitute a separate offense as contemplated by this section**.

393.715. 1. The general powers of a commission to the extent provided in section 393.710 to be exercised for the benefit of its contracting members shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or public utilities or acquire any interest in or any rights to capacity of a project, within or outside the state, and act as an agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy; provided, however, the commission shall not have the power or authority to erect, own, use or maintain a transmission line which

is parallel or generally parallel to another transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the public service commission finds that it is not feasible to utilize the transmission line which is in place;

(3) Acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, wholesale distribution, and utilization of water and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization; provided, however, that a commission shall not sell or distribute water, at retail or wholesale, within the certificated area of a water corporation which is subject to the jurisdiction of the public service commission unless the sale or distribution of water is within the boundaries of a public water supply district or municipality which is a contracting municipality in the commission and the commission has obtained the approval of the public service commission prior to commencing such said sale or distribution of water;

(4) Acquire by purchase or lease, construct, install, and operate lagoons, pipelines, wells, pumping stations, sewage treatment plants and other facilities for the treatment and transportation of sewage and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization;

(5) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

(6) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

(7) Employ agents and employees;

(8) Contract with any person, within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment of bonds, except to the extent and on such terms as its board of directors or executive committee shall determine**[**. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340 shall apply**]**;

(9) Purchase, sell, exchange, transmit, treat, dispose or distribute water, sewage, gas, heat or electric power and energy, or any by-product resulting

therefrom, within and outside the state, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, treatment, disposal or transmission, on such terms and for such period of time as its board of directors or executive committee shall determine. A commission may not sell or distribute water, gas, heat or power and energy, or sell sewage service at retail to ultimate customers outside the boundary limits of its contracting municipalities except pursuant to subsection 2 or 3 of this section;

(10) Acquire, own, hold, use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

(11) Exercise the powers of eminent domain for public use as provided in chapter 523, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

(12) Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in Section 27 of Article VI of the Missouri Constitution;

(13) Sue and be sued in its own name;

(14) Have and use a corporate seal;

(15) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission. The powers enumerated in this subdivision shall constitute the power to tax for purposes of Article X, Section 15 of the Missouri Constitution;

(16) Make, and from time to time, amend and repeal bylaws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

(17) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

(18) Join organizations, membership in which is deemed by the board of directors or its executive committee to be beneficial to accomplishment of the commission's purposes;

(19) Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

87 (20) Do and perform any acts and things authorized by this section under,
88 through or by means of an agent or by contracts with any person.
89 2. When a municipality purchases a privately owned water utility and a
90 commission is created pursuant to sections 393.700 to 393.770, the commission
91 may continue to serve those locations previously receiving water from the private
92 utility even though the location receives such service outside the geographical
93 area of the municipalities forming the commission. New water service may be
94 provided in such areas if the site to receive such service is located within
95 one-fourth of a mile from a site serviced by the privately owned water utility.
96 3. When a commission created by any of the contracting entities listed in
97 subdivision (4) of section 393.705 becomes a successor to any nonprofit water
98 corporation, nonprofit sewer corporation or other nonprofit agency or entity
99 organized to provide water or sewer service, the commission may continue to
100 serve, as well as provide new service to, those locations and areas previously
101 receiving water or sewer service from such nonprofit entity, regardless of whether
102 or not such location receives such service outside the geographical service area
103 of the contracting entities forming such commission; provided that such locations
104 and areas previously receiving water and sewer service from such nonprofit entity
105 are not located within:
106 (1) Any county of the first classification with a population of more than
107 six hundred thousand and less than nine hundred thousand;
108 (2) The boundaries of any sewer district established pursuant to Article
109 VI, Section 30(a) of the Missouri Constitution; or
110 (3) The certificated area of a water or sewer corporation that is subject to
111 the jurisdiction of the public service commission.

516.130. Within three years:

2 (1) An action against a sheriff, coroner or other officer, upon a liability
3 incurred by the doing of an act in his official capacity and in virtue of his office,
4 or by the omission of an official duty, including the nonpayment of money
5 collected upon an execution or otherwise;
6 (2) An action upon a statute for a penalty or forfeiture, where the action
7 is given to the party aggrieved, or to such party and the state**[**;
8 (3) An action under section 290.300**]**.

630.546. 1. The commissioner of administration is authorized to enter
2 into a lease purchase agreement for the use of facilities to be constructed by a
3 private developer on the grounds of the existing St. Louis state hospital for the

use of the department of mental health, provided any facilities to be constructed shall contain provisions for a possible adaptive re-use of the present "dome" building.

2. The attorney general shall approve the instrument of conveyance as to form.

[3. Not less than the prevailing hourly rate of wages paid generally in the locality in which the work is performed shall be paid by contractors or subcontractors to employees or other workers when such contractors or subcontractors construct facilities for private developers on the grounds of the existing St. Louis state hospital for the use of the department of mental health. Such construction projects shall be considered public works and the determination of the prevailing hourly rate of wages for the locality shall be made in accordance with the provisions of sections 290.210 to 290.340.**]**

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

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

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

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

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

(5) "Labor organization" or "union" means any entity which has been designated pursuant to the terms of the National Labor Relations Act as the exclusive bargaining representative of employees of employers engaged in the construction industry,

which entity or affiliated entity has ever had a collective bargaining agreement which determined an occupational title wage rate;

(6) "Locality" means the county where the physical work upon public works is performed;

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

(8) "Prevailing hourly rate of wages" means the wages paid generally, in the locality in which the public works is being performed, to workmen engaged in work of a similar character including the basic hourly rate of pay and the amount of the rate of contributions irrevocably made to a fund, plan or program, and the amount of the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workmen and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workmen affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal or state law to provide any of the benefits; provided, that the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the department, insofar as sections 290.210 to 290.340 are concerned, may be discharged by the making of payments in cash, by the making of irrevocable contributions by the assumption of an enforceable commitment to bear the costs of a plan or program as provided herein, or any combination thereof, where the aggregate of such payments, contributions and costs is not less than the rate of pay plus the other amounts as provided herein;

(9) "Previous six annual wage order reporting periods"

means the current annual wage order reporting period under consideration for wage rate determinations and the five immediately preceding annual wage order reporting periods;

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

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

(12) "Workmen" means laborers, workmen and mechanics.**]**

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

[290.230. 1. Not less than the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed, and not less than the prevailing hourly rate of wages for legal holiday and overtime work, shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work. Only such workmen as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job shall be deemed to be employed upon public works. Any such workman who agrees in writing to volunteer his or her labor without pay shall not be deemed to be employed upon public works, and shall not be entitled to the prevailing hourly rate of wages. For the purposes of this section, the term "workman who agrees in writing to volunteer his or her

labor without pay" shall mean a workman who volunteers his or her labor without any promise of benefit or remuneration for such voluntary activity, and who is not a prisoner in any jail or prison facility and who is not performing community service pursuant to disposition of a criminal case against him, and is not otherwise employed for compensation at any time in the construction or maintenance work on the same public works for which the workman is a volunteer. Under no circumstances may an employer force, compel or otherwise intimidate an employee into performing work otherwise paid by a prevailing wage as a volunteer.

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

[290.240. 1. The department shall inquire diligently as to any violation of sections 290.210 to 290.340, shall institute actions for penalties herein prescribed, and shall enforce generally the provisions of sections 290.210 to 290.340.

2. The department may establish rules and regulations for the purpose of carrying out the provisions of sections 290.210 to 290.340.**]**

[290.250. 1. Every public body authorized to contract for or construct public works before advertising for bids or undertaking such construction shall request the department to determine the prevailing rates of wages for workmen for the class or type of work called for by the public works, in the locality where the work is to be performed. The department shall determine the prevailing hourly rate of wages in the locality in which the work is to be performed for each type of workman required to execute the contemplated contract and such determination or schedule of the prevailing hourly rate of wages shall be attached to and made a part of the specifications for the work. The public body shall then specify in the resolution or ordinance and in the call for bids for the contract what is the prevailing hourly rate of wages in the locality for each type of workman needed to execute the contract and also the general prevailing rate for legal holiday and overtime

work. It shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him to pay not less than the specified rates to all workmen employed by them in the execution of the contract. The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages shall be paid to all workmen performing work under the contract. The employer shall forfeit as a penalty to the state, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded one hundred dollars for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under said contract, by him or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of sections 290.210 to 290.340 committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under said contract, to withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of sections 290.210 to 290.340, and if payment has already been made to him, the contractor may recover from him the amount of the penalty in a suit at law.

2. In determining whether a violation of sections 290.210 to 290.340 has occurred, and whether the penalty under subsection 1 of this section shall be imposed, it shall be the duty of the department to investigate any claim of violation. Upon completing such investigation, the department shall notify the employer of its findings. If the department concludes that a violation of sections 290.210 to 290.340 has occurred and a penalty may be due, the

department shall notify the employer of such finding by providing a notice of penalty to the employer. Such penalty shall not be due until forty-five days after the date of the notice of the penalty.

3. The employer shall have the right to dispute such notice of penalty in writing to the department within forty-five days of the date of the notice. Upon receipt of this written notice of dispute, the department shall notify the employer of the right to resolve such dispute through arbitration. The state and the employer shall submit to an arbitration process to be established by the department by rule, and in conformance with the guidelines and rules of the American Arbitration Association or other arbitration process mutually agreed upon by the employer and the state. If at any time prior to the department pursuing an enforcement action to enforce the monetary penalty provisions of subsection 1 of this section against the employer, the employer pays the back wages as determined by either the department or the arbitrator, the department shall be precluded from initiating any enforcement action to impose the monetary penalty provisions of subsection 1 of this section.

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

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

[290.260. 1. The department, as it deems necessary, shall from time to time investigate and determine the prevailing hourly rate of wages for heavy and highway construction work in the localities. In doing so, the department shall accept and consider information regarding local wage rates that is submitted in either

paper or electronic formats. A determination applicable to every locality to be contained in a general wage order shall be made annually on or before July first of each year for the Missouri state highways and transportation commission and shall remain in effect until superseded by a new general wage order. In determining prevailing rates, the department shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, and the rates that are paid generally within the locality.

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

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

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

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

6. Within twenty days of the conclusion of the hearing, the department must rule on the written objection and make the final

determination that it believes the evidence warrants. Immediately, the department shall file a certified copy of its final determination with the secretary of state and with the department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

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

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

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

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

2. The prevailing wage rate for an occupational title in a locality shall, with the exception of localities that are counties of

the third and fourth classification and any county of the second classification with more than fifty-eight thousand but fewer than sixty-five thousand inhabitants, be the wage rate most commonly paid, as measured by the number of hours worked at each wage rate, for that occupational title within that locality. In determining such prevailing wage rates, the department shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, when no wages were reported.

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

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

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

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

(4) If no work within a particular occupational title has

51 been performed in a locality at any wage rate, the prevailing wage
52 rate for that occupational title in that locality shall be determined
53 in the following manner:
54 (a) If wages were reported for an occupational title within
55 a locality within the previous six annual wage order reporting
56 periods and the prevailing wage rate was determined by a
57 collective bargaining agreement by hours worked pursuant to such
58 agreement in the most recent annual wage order reporting period
59 where such wages were reported, then the wage rate paid pursuant
60 to the current collective bargaining agreement shall be the
61 prevailing rate for that occupational title within the locality;
62 (b) If wages were reported for an occupational title within
63 a locality within the previous six annual wage order reporting
64 periods and the prevailing wage rate was not determined by hours
65 worked pursuant to a collective bargaining agreement in the most
66 recent annual wage order reporting period where such wages were
67 reported, then the wage rate paid in the most recent annual wage
68 order reporting period when such wages were reported shall be the
69 prevailing wage rate for that occupational title within the locality;
70 (c) If no wages were reported for an occupational title
71 within a locality within the previous six annual wage order
72 reporting periods, the department shall examine hours and wages
73 reported in all adjacent Missouri counties during the same
74 periods. The most recent reported wage rate in a given wage order
75 period in the adjacent Missouri county with the most reported
76 hours actually worked for that occupational title in the wage period
77 during the previous six annual wage order reporting periods shall
78 be used to determine the prevailing wage rate;
79 (d) If no wages were reported for an occupational title
80 within any adjacent Missouri county within the previous six annual
81 wage order reporting periods, then the rate paid pursuant to the
82 current collective bargaining agreement shall be the prevailing
83 wage rate for that occupational title within the locality.
84 4. A certified copy of the initial determinations so made
85 shall be filed immediately with the secretary of state and with the
86 department in Jefferson City. Copies shall be supplied by the

87 department to all persons requesting them within ten days after
88 the filing.
89 5. At any time within thirty days after the certified copies
90 of the determinations have been filed with the secretary of state
91 and the department, any person who is affected thereby may object
92 in writing to a determination or a part thereof that he deems
93 objectionable by filing a written notice with the department, stating
94 the specific grounds of the objection. If no objection is filed, the
95 determination is final after thirty days.
96 6. After the receipt of the objection, the department shall
97 set a date for a hearing on the objection. The date for the hearing
98 shall be within sixty days of the receipt of the objection. Written
99 notice of the time and place of the hearing shall be given to the
100 objectors at least ten days prior to the date set for the hearing.
101 7. The department at its discretion may hear each written
102 objection separately or consolidate for hearing any two or more
103 written objections. At the hearing the department shall first
104 introduce in evidence the investigation it instituted and the other
105 facts which were considered at the time of the original
106 determination which formed the basis for its determination. The
107 department, or the objector, or any interested party, thereafter may
108 introduce any evidence that is material to the issues.
109 8. Within twenty days of the conclusion of the hearing, the
110 department shall rule on the written objection and make the final
111 determination that it believes the evidence warrants. Immediately,
112 the department shall file a certified copy of its final determination
113 with the secretary of state and with the department and shall serve
114 a copy of the final determination on all parties to the proceedings
115 by personal service or by registered mail.
116 9. This final decision of the department of the prevailing
117 wages in the locality for each occupational title is subject to review
118 in accordance with the provisions of chapter 536. Any person
119 affected, whether or not the person participated in the proceedings
120 resulting in the final determination, may have the decision of the
121 department reviewed. The filing of the final determination with
122 the secretary of state shall be considered a service of the final

determination on persons not participating in the administrative proceedings resulting in the final determination.

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

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

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

[290.263. The hourly wages to be paid as prescribed in section 290.250 to workmen upon public works shall not be less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.**]**

[290.265. A clearly legible statement of all prevailing hourly wage rates to be paid to all workmen employed in order to execute the contract and employed on the construction of the public works shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor engaged in the public works projects under the provisions of this law and such notice shall remain posted during the full time that any such workman shall be employed on the public works.**]**

[290.270. The finding of the department ascertaining and declaring the prevailing hourly rate of wages shall be final for the locality, unless reviewed under the provisions of sections 290.210 to 290.340. Nothing in sections 290.210 to 290.340, however, shall be construed to prohibit the payment to any workman employed on any public work of more than the prevailing rate of wages. Nothing in sections 290.210 to 290.340 shall be construed to limit the hours of work which may be performed by any workman in any particular period of time.**]**

[290.280. The authorized representative of the department may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation or hearing. The subpoena shall be signed and issued by the department's authorized representative. In case of failure of any person to comply with any subpoena lawfully issued under this section, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, the authorized representative of the department may proceed to enforce obedience to the subpoenas in the manner provided by section 536.077 for administrative agencies. The authorized representative of the department shall have the power to certify to official acts.**]**

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

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

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

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

4. The provisions of subsection 3 of this section shall not apply to construction of public works for which the contract

41 awarded is in the amount of two hundred fifty thousand dollars or
42 less.**]**

[290.300. Any workman employed by the contractor or by
2 any subcontractor under the contractor who shall be paid for his
3 services in a sum less than the stipulated rates for work done
4 under the contract, shall have a right of action for double whatever
5 difference there may be between the amount so paid and the rates
6 provided by the contract together with a reasonable attorney's fee
7 to be determined by the court, and an action brought to recover
8 same shall be deemed to be a suit for wages, and any and all
9 judgments entered therein shall have the same force and effect as
10 other judgments for wages.**]**

[290.305. No person, firm or corporation shall violate the
2 wage provisions of any contract contemplated in sections 290.210
3 to 290.340 or suffer or require any employee to work for less than
4 the rate of wages so fixed, or violate any of the provisions contained
5 in sections 290.210 to 290.340. Where workmen are employed and
6 their rate of wages has been determined as provided in sections
7 290.210 to 290.340, no person, either for himself or any other
8 person, shall request, demand or receive, either before or after such
9 workman is engaged, that such workman pay back, return, donate,
10 contribute, or give any part or all of said workman's wages, salary,
11 or thing of value, to any person, upon the statement,
12 representation, or understanding that failure to comply with such
13 request or demand will prevent such workman from procuring or
14 retaining employment, and no person shall, directly or indirectly,
15 pay, request or authorize any other person to violate this
16 section. This section does not apply to any agent or representative
17 of a duly constituted labor organization acting in the collection of
18 dues or assessments of such organization.**]**

[290.315. All contractors and subcontractors required in
2 sections 290.210 to 290.340 to pay not less than the prevailing rate
3 of wages shall make full payment of such wages in legal tender,
4 without any deduction for food, sleeping accommodations,
5 transportation, use of small tools, or any other thing of any kind or
6 description. This section does not apply where the employer and

employee enter into an agreement in writing at the beginning of said term of employment covering deductions for food, sleeping accommodations, or other similar items, provided such agreement is submitted by the employer to the public body awarding the contract and the same is approved by such public body as fair and reasonable.**]**

[290.320. No public body, officer, official, member, agent or representative authorized to contract for public works shall fail, before advertising for bids or contracting for such construction, to have the department determine the prevailing rates of wages of workmen for each class of work called for by the public works in the locality where the work is to be performed as provided in sections 290.210 to 290.340.**]**

[290.325. No public body, officer, official, member, agent or representative thereof authorized to contract for public works shall award a contract for the construction of such improvement or disburse any funds on account of the construction of such public improvement, unless such public body has first had the department determine the prevailing rates of wages of workmen for the class of work called for by such public works in the locality where the work is to be performed and such determination has been made a part of the specifications and contract for such public works.**]**

[290.330. The department after investigation, upon complaint or upon its own initiative, shall file with the secretary of state a list of the contractors and subcontractors who it finds have been prosecuted and convicted for violations of sections 290.210 to 290.340 and such contractor or subcontractor, or simulations thereof, shall be prohibited from contracting directly or indirectly with any public body for the construction of any public works or from performing any work on the same as a contractor or subcontractor for a period of one year from the date of the first conviction for such violation and for a period of three years from the date of each subsequent violation and conviction thereof. No public body shall award a contract for a public works to any contractor or subcontractor, or simulation thereof, during the time that its name appears on said list. The filing of the notice of

15 conviction with the secretary of state shall be notice to all public
16 bodies and their officers, officials, members, agents and
17 representatives.**]**

[290.335. If it is found that a public body, contractor or
2 subcontractor has not complied with any of the terms of sections
3 290.210 to 290.340, the department shall give notice of the precise
4 violation in writing to such public body, contractor or
5 subcontractor. Sufficient time may be allowed for compliance
6 therewith as the department deems necessary. After the expiration
7 of the time prescribed in said notice, the department may in
8 writing inform the attorney general of the fact that such notice has
9 been given and that the public body, contractor or subcontractor or
10 the authorized representative or agent thereof to whom it was
11 directed has not complied with such notice. Upon receipt thereof,
12 the attorney general shall at the earliest possible time bring suit
13 in the name of the state in the circuit court of the county in which
14 such public body is located or where any such contractor or
15 subcontractor is engaged in any public works to enjoin the award
16 of such contract for a public works, or any further work or
17 payments thereunder if the contract has been awarded, until the
18 requirements of such notice are fully complied with. The court may
19 issue a temporary restraining order with due notice to the
20 defendant in such action. The plaintiff shall in any such injunctive
21 action post an adequate bond to be set by the circuit judge. Upon
22 final hearing thereof, if the court is satisfied that the requirements
23 of the notice by the department to the defendant were not
24 unreasonable or arbitrary, it shall issue an order enjoining the
25 awarding of such contract for a public works, or any further work
26 or payments thereunder if the contract has been awarded, until the
27 notice is fully complied with. Such injunction shall continue
28 operative until the court is satisfied that the requirements of such
29 notice have been complied with and the court shall have and
30 exercise with respect to the enforcement of such injunctions all the
31 power in it in other similar cases. Both the plaintiff and defendant
32 in such action have the same rights of appeal as are provided by
33 law in other injunction proceedings.**]**

[290.340. Any officer, official, member, agent or representative of any public body, contractor or subcontractor who willfully violates and omits to comply with any of the provisions and requirements of sections 290.210 to 290.340 shall be punished for each violation thereof by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day such violation or omission continues shall constitute a separate offense as contemplated by this section.**]**

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