

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 291**  
93RD GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industrial Relations, March 8, 2005, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1402S.04C

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**AN ACT**

To repeal sections 290.210, 290.230, 290.250, 290.262, 290.290, 290.300, 290.305, and 290.335, RSMo, and to enact in lieu thereof nine new sections relating to public contracts.

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

Section A. Sections 290.210, 290.230, 290.250, 290.262, 290.290, 290.300, 290.305, and 290.335, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 290.210, 290.230, 290.250, 290.262, 290.290, 290.300, 290.305, 290.326, and 290.335, to read as follows:

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

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

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

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

(4) "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.

(5) "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 by a contractor or subcontractor to a trustee or to a third person pursuant 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 to trustees or third persons as provided herein, 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.

(6) "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.

(7) "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.

(8) "Workmen" means laborers, workmen [and], **apprentices, mechanics, and other individuals performing work covered by an occupational title, regardless of any classification based on experience. In determining the prevailing wage rate, apprentice hours submitted shall be counted at the journeyman's rate of pay as established by the employer for the occupational title under which the work was performed.**

290.230. 1. **The prevailing hourly rate of wages on all work covered by the annual wage order issued by the division of labor standards:**

(1) **In all counties of the first classification with an assessed valuation of two billion dollars, or less, as determined by the most recent assessment, shall not**

be 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, **and** shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works **with a cost equal to or in excess of five thousand dollars**, exclusive of maintenance work[.];

**(2) In all counties of the first classification with an assessed valuation of more than two billion dollars, as determined by the most recent assessment, shall not be 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, and 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; and**

**(3) In all counties of the second, third, and fourth classification, shall not be 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 with a cost equal to or in excess of twenty-five thousand dollars, exclusive of maintenance work.**

2. 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.

[2.] 3. 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.

4. **No public body proposing to undertake construction of a public works project, subject to subsection 1 of this section, under a single contract may divide such contract into multiple contracts of lesser value to avoid compliance with the provisions of this section.**

5. **The construction of a public works project, subject to subsection 1 of this section, shall apply to the cost of the entire project, excluding engineering, architectural expenses, right-of-way, or property acquisition.**

6. **If a public works project, subject to subsection 1 of this section, crosses the jurisdictional lines of two or more counties, the determination of the prevailing hourly rate of wages for such project shall be based in the location where the majority of work, as determined by the dollar amount of said project, takes place.**

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] **from the division of labor standards the annual wage order and** the prevailing hourly rate of wages **which** 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.

**2. A public body will be allowed one mistake during a two-year period in determining whether or not the prevailing wage is applicable to the project for which the public body has contracted.**

**3. A public body, in estimating the cost of a public works project to be included in project specification for bidding, shall estimate the project costs using applicable prevailing hourly wage rates.**

4. 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. It shall also require in all contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. The contractor shall forfeit as a penalty to the [state, county, city and county, city, town, district or other political subdivision] **public body** on whose behalf the contract is made or awarded ten 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.

5. 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.

**6. Any public body that has been determined to have violated the provisions of subsections 2 and 3 of this section shall lose their exclusion from the prevailing wage law on all future work for a period of three years from the date of the determination.**

**7. The labor and industrial relations commission, as established under section 286.005, RSMo, shall make determinations on allegations that a public body has violated the provisions of subsections 2 and 3 of this section.**

290.262. 1. Except as otherwise provided in section 290.260, the department shall annually investigate and determine the prevailing hourly rate of wages in each locality for each separate occupational title. 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. 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, and shall, by March tenth of each year, make an initial determination for each occupational title within the locality.

2. A certified copy of the initial determinations 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] **annual wage orders** have been filed with the secretary of state and the [department] **labor and industrial relations commission**, any person who is affected thereby may object in writing to a [determination] **annual wage order** or a part thereof that [he deems] **is deemed** objectionable by filing a written notice with the [department] **commission**, stating the specific grounds of the objection. If no objection is filed[,] **for a locality, the rates in the [determination is] annual wage order for that locality are final after thirty days. If an objection is filed to the hours worked or wages paid generally within the locality, then only hours that are supported by the employer's payroll records shall be considered. All other hours shall be discarded. Supporting documentation may be submitted during the objection process.**

4. After 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 shall 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 for each occupational title is subject to review in accordance with the provisions of chapter 536, RSMo. 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, RSMo, and be made a party to the proceedings.

9. Any annual wage order made for a particular occupational title in a locality 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.

10. 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.

290.290. 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 **that he had paid all covered employees the prevailing rates specified for the public work, without benefit of a wage subsidy, bid supplement, or rebate received, directly or indirectly from another project, from employees, labor organizations, or any other third party on the project.** 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 awarded is in the amount of two hundred fifty thousand dollars or less.

290.300. Any workman employed by the contractor or by any subcontractor under the contractor who shall be paid for his services in a sum less than the stipulated rates for work done under the contract, shall have a right of action for double whatever difference there may be between the amount so paid and the rates provided by the contract together with a reasonable attorney's fee to be determined by the court, and an action brought to recover

same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages. **The right of action for double any difference there may be between the amount so paid and the rate provided by the contract shall be limited to the employer and no other party.**

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

**2. It shall be unlawful for any employer to submit a bid for or perform work on the construction of public works contemplated in sections 290.210 to 290.340 where such bid or work performance includes, directly or indirectly from another project, any wage subsidies, bid supplements, or rebates from any employees or labor organization on such construction project or any other project from any third party, in whole or in part, to subsidize any costs on the construction project.**

290.326. No public body, officer, official, member, agent, or representative authorized to contract for public works shall award a contract for the construction of an improvement or disburse any funds on account of the construction of a public improvement unless such public body first has received from the contractor or subcontractor who will perform the work an affidavit stating that he will not participate, either directly or indirectly, in any union job targeting programs, bid supplement programs, market recovery programs, or any other program or device providing wage subsidies, bid supplements, or rebates that would subsidize the labor costs on the project. Any contractor or subcontractor who submits a false affidavit as required shall be in violation of this section.

290.335. 1. If it is found that a public body, contractor or subcontractor has not complied with any of the terms of sections 290.210 to 290.340, the department shall give notice of the precise violation in writing to such public body, contractor or subcontractor. Sufficient time may be allowed for compliance therewith as the department deems necessary. After the expiration of the time prescribed in said notice, the department



may in writing inform the attorney general of the fact that such notice has been given and that the public body, contractor or subcontractor or the authorized representative or agent thereof to whom it was directed has not complied with such notice. Upon receipt thereof, the attorney general shall at the earliest possible time bring suit in the name of the state in the circuit court of the county in which such public body is located or where any such contractor or subcontractor is engaged in any public works to enjoin the award of such contract for a public works, or any further work or payments thereunder if the contract has been awarded, until the requirements of such notice are fully complied with. The court may issue a temporary restraining order with due notice to the defendant in such action. The plaintiff shall in any such injunctive action post an adequate bond to be set by the circuit judge. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the department to the defendant were not unreasonable or arbitrary, it shall issue an order enjoining the awarding of such contract for a public works, or any further work or payments thereunder if the contract has been awarded, until the notice is fully complied with. Such injunction shall continue operative until the court is satisfied that the requirements of such notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power in it in other similar cases. Both the plaintiff and defendant in such action have the same rights of appeal as are provided by law in other injunction proceedings.

**2. If a contractor or subcontractor has engaged in a violation of any of the provisions and requirements of sections 290.210 to 290.340, such that a penalty is due to a public body or a wage is due to a worker, or both, then the department may notify the attorney general of the violation in writing. Upon receipt thereof, the attorney general may bring suit in the name of the state in the circuit court of the county in which the contracting body is located to obtain restitution on behalf of workers not properly paid or penalties due to the public body. Nothing in this subsection shall be construed to preclude any person or public body from asserting any cause of action they might have against a contractor or subcontractor or surety under contractual or statutory rights.**

**3. All actions for the collection of any deficiency in wages shall be commenced within two years of the accrual of the cause of action.**