

SECOND REGULAR SESSION

SENATE BILL NO. 849

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS MAYER, CROWELL, ENGLER, PURGASON, CLEMENS, VOGEL,
GRIESHEIMER, SHIELDS, KLINDT, NODLER, CAUTHORN, SCOTT, STOUFFER,
RIDGEWAY, LOUDON, BARTLE AND CHAMPION.

Read 1st time January 11, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3477S.021

AN ACT

To repeal sections 290.220, 290.290 and 290.305, RSMo, and to enact in lieu thereof
nine new sections relating to public contracts.

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

Section A. Sections 290.220, 290.290 and 290.305, RSMo, are repealed and
2 nine new sections enacted in lieu thereof, to be known as sections 34.203, 34.206,
3 34.209, 34.212, 34.215, 290.220, 290.290, 290.305, and 290.326, to read as follows:

**34.203. The provisions of sections 34.203 to 34.215 shall be known
2 and may be cited as the "Fairness in Public Construction Act".**

**34.206. The purpose of sections 34.203 to 34.215 is to fulfill the
2 state's proprietary objectives in maintaining and promoting the
3 economical, nondiscriminatory, and efficient expenditures of public
4 funds in connection with publicly funded or assisted construction
5 projects.**

**34.209. Any state, any political subdivision of the state, or any
2 agency, or instrumentality thereof, when engaged in procuring
3 products or services or letting contracts for manufacture of public
4 works, or overseeing such procurement, construction, or manufacture,
5 shall ensure that bid specification, project agreements, and other
6 controlling documents entered into, required, or subject to approval by
7 the state, political subdivision, agency, or instrumentality do not:**

**(1) Require or prohibit bidders, offerors, contractors, or
8 subcontractors to enter into or adhere to agreements with one or more
9 labor organizations on the same or related projects;**
10

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

11 (2) Discriminate against bidders, offerors, contractors, or
12 subcontractors for entering or refusing to become or remain signatories
13 or otherwise adhere to agreements with one or more labor
14 organizations on the same or related construction projects;

15 (3) Require or prohibit any bidder, offeror, contractor, or
16 subcontractor to enter into, adhere to, or enforce any agreement that
17 requires its employees as a condition of employment to:

18 (a) Become members of or affiliated with a labor organization;
19 or

20 (b) Pay dues or fees to a labor organization, over an employee's
21 objection, in excess of the employee's share of labor organization costs
22 relating to collective bargaining, contract administration, or grievance
23 adjustment.

24 Nothing in sections 34.203 to 34.215 shall prohibit employers or other
25 parties covered by the National Labor Relations Act from entering into
26 agreements or engaging in any other activity arguably protected by
27 law, nor shall any aspect of sections 34.203 to 34.215 be interpreted in
28 such a way as to interfere with the labor relations of parties covered
29 by the National Labor Relations Act.

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

7 2. The state, any political subdivision of the state, or any agency
8 or instrumentality thereof shall exercise such authority as may be
9 required to preclude a grant recipient or party to a cooperative
10 agreement from imposing any of the elements specified in section
11 34.209 in connection with any grant or cooperative agreement awarded
12 or entered into. Nothing in sections 34.203 to 34.215 shall prohibit
13 contractors or subcontractors from voluntarily entering into
14 agreements described in section 34.209.

34.215. Any interested party, including a bidder, offeror,
2 contractor, subcontractor, or taxpayer, shall have standing to challenge
3 any bid specification, project agreement, controlling document, grant,
4 or cooperative agreement which violates the provisions of sections

5 **34.203 to 34.215, and shall be awarded court costs and attorney's fees**
6 **if the interested party prevails.**

290.220. It is hereby declared to be the policy of the state of Missouri that
2 a wage of no less than the prevailing hourly rate of wages for work of a similar
3 character in the locality in which the work is performed shall be paid to all
4 workmen employed by or on behalf of any public body engaged in public works
5 exclusive of maintenance work. **It is further declared to be the policy of the**
6 **state of Missouri that public works construction projects be awarded**
7 **to and completed by contractors and subcontractors on a fair and**
8 **competitive basis.**

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

12 **2. Except on public projects built under the general wage order,**
13 **section 290.260, or heavy construction work under the annual wage**
14 **order, not including the construction of water or sewer lines, each**
15 contractor and subcontractor shall file with the contracting public body upon
16 completion of the public work and prior to final payment therefor an affidavit
17 stating that he had fully complied with the provisions and requirements of this
18 chapter[,] **and that he had paid all covered employees the prevailing**
19 **rates specified for the public work, without benefit of a wage subsidy,**
20 **bid supplement, or rebate received, directly or indirectly, from another**
21 **project, from employees, labor organizations, or any other third party**
22 **on the project for which the affidavit is signed.** No public body shall be
23 authorized to make final payment until such affidavit is filed therewith in proper
24 form and order.

25 **3. Each contractor and subcontractor engaged in any construction of**
26 public works shall have its name, acceptable abbreviation or recognizable logo

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

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

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

16 2. **Except on public projects built under the general wage order,**
17 **section 290.260, or heavy construction work under the annual wage**
18 **order, not including the construction of water or sewer lines, it shall**
19 **be unlawful for any employer to receive, directly or indirectly from**

20 another project, any wage subsidies, bid supplements, or rebates from
21 any employees or labor organization for such construction project or
22 from any third party, in whole or in part, to subsidize labor costs on
23 the construction project.

290.326. No public body, officer, official, member, agent, or
2 representative authorized to contract for public works shall award a
3 contract for the construction of an improvement or disburse any funds
4 on account of the construction of a public improvement unless such
5 public body first has received from the contractor or subcontractor
6 who will perform the work an affidavit stating that he will not
7 participate, either directly or indirectly, in any job targeting programs,
8 bid supplement programs, market recovery programs, or any other
9 program or device providing wage subsidies, bid supplements, or
10 rebates that would subsidize the labor costs on the project covered
11 under subsection 2 of section 290.305. Any contractor or subcontractor
12 who submits a false affidavit as required shall be in violation of this
13 section. Any contractor or subcontractor who is found to be in
14 violation of this section shall pay to the public body twice the amount
15 of the subsidy received.

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