

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 339
94TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, February 8, 2007, with recommendation that the Senate Committee Substitute do pass.

1248S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 290.250, RSMo, and to enact in lieu thereof eight 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Section A. Section 290.250, RSMo, is repealed and eight new sections
2 enacted in lieu thereof, to be known as sections 34.203, 34.206, 34.209, 34.212,
3 34.216, 290.095, 290.250, and 1, to read as follows:

**34.203. The provisions of sections 34.203 to 34.216 shall be known
2 and may be cited as the "Fairness in Public Construction Act".**

**34.206. The purpose of sections 34.203 to 34.216 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. Nothing in sections 34.203 to 34.216 shall prohibit employers
6 or other parties covered by the National Labor Relations Act from
7 entering into agreements or engaging in any other activity arguably
8 protected by law, nor shall any aspect of sections 34.203 to 34.216 be
9 interpreted in such a way as to interfere with the labor relations of
10 parties covered by the National Labor Relations Act.**

**34.209. The state, any agency of the state, or any instrumentality
2 thereof, when engaged in procuring or letting contracts for
3 construction of a project that is funded by greater than fifty percent of
4 state funds, shall ensure that bid specification, project agreements, and
5 other controlling documents entered into, required, or subject to**

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

6 approval by the state, agency, or instrumentality do not:

7 (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; or

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

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

7 2. The state, any agency of the state, or any instrumentality
8 thereof shall exercise such authority as may be required to preclude a
9 grant recipient or party to a cooperative agreement from imposing any
10 of the elements specified in section 34.209 in connection with any grant
11 or cooperative agreement awarded or entered into. Nothing in sections
12 34.203 to 34.216 shall prohibit contractors or subcontractors from
13 voluntarily entering into agreements described in section 34.209.

34.216. 1. For purposes of this section, the term "project labor
2 agreement" shall be defined as a multi-employer, multi-union pre-hire
3 agreement designed to systemize labor relations at a construction site
4 that is required by the state or a political subdivision of the state as a
5 condition of a bid specification for a construction project, thereby
6 insuring that all contractors and subcontractors on a project comply
7 with the terms of a union-only agreement.

8 2. The state or a political subdivision of the state may enter into
9 a union-only project labor agreement for the procurement of
10 construction services, except as provided in section 34.209, on a project-
11 by-project basis only if the project is funded fifty percent or less with
12 state funds and only on the condition that:

13 (1) The state or political subdivision must analyze the impact of
14 a union-only project labor agreement and consider:

15 (a) Whether the union-only project labor agreement advances the
16 interests of the public entity and its citizens;

17 **(b) Whether the union-only project labor agreement is**
18 **appropriate considering the complexity, size, cost impact, and need for**
19 **efficiency on the project;**

20 **(c) Whether the union-only project labor agreement impacts the**
21 **availability of a qualified work force; and**

22 **(d) Whether the scope of the union-only project labor agreement**
23 **has a business justification for the project as bid;**

24 **(2) The state or political subdivision shall publish the findings**
25 **of subdivision (1) of this subsection in a document titled "Intent to**
26 **Enter Into a Union Project Labor Agreement". The document shall**
27 **establish a rational basis upon which the state or political subdivision**
28 **bases its intent to require a union-only project labor agreement for the**
29 **project;**

30 **(3) No fewer than fourteen days but not more than thirty days**
31 **following publication of the notice of a public hearing, the state or**
32 **political subdivision shall conduct a public hearing on whether to**
33 **proceed with its intent to require a union-only project labor agreement;**

34 **(4) Within thirty days of the public hearing set forth in**
35 **subdivision (3) of this subsection, the state or political subdivision shall**
36 **publish its determination on whether or not to require a union-only**
37 **project labor agreement.**

38 **3. (1) Any interested party may, within thirty days of the**
39 **determination of the state or political subdivision as set forth in**
40 **subdivision (4) of subsection 2 of this section, appeal to the labor and**
41 **industrial relations commission for a determination as to whether the**
42 **state or political subdivision complied with subsection 2 of this section**
43 **for a union-only project labor agreement as defined in subsection 1 of**
44 **this section.**

45 **(2) The labor and industrial relations commission shall consider**
46 **the appeal in subdivision (1) of this section under a rational basis**
47 **standard of review.**

48 **(3) The labor and industrial relations commission shall hold a**
49 **hearing on the appeal within sixty days of the filing of the appeal. The**
50 **commission shall issue its decision within ninety days of the filing date**
51 **of the appeal.**

52 **(4) Any aggrieved party from the labor and industrial relations**
53 **commission decision set forth in subdivision (3) of this subsection may**

54 file an appeal with the circuit court of Cole County within thirty days
55 of the commission's decision.

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

7 2. In the event a wage subsidy, bid supplement, or rebate is
8 lawfully provided or received under subsections 1 or 2 of this section,
9 the entity receiving such subsidy, supplement, or rebate shall report
10 the date and amount of such subsidy, supplement, or rebate to the
11 public body within thirty days of receipt of payment. This disclosure
12 report shall be a matter of public record under chapter 610, RSMo.

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

290.250. 1. Every public body authorized to contract for or construct
2 public works, before advertising for bids or undertaking such construction shall
3 request the department to determine the prevailing rates of wages for workmen
4 for the class or type of work called for by the public works, in the locality where
5 the work is to be performed. The department shall determine the prevailing
6 hourly rate of wages in the locality in which the work is to be performed for each
7 type of workman required to execute the contemplated contract and such
8 determination or schedule of the prevailing hourly rate of wages shall be attached
9 to and made a part of the specifications for the work. The public body shall then
10 specify in the resolution or ordinance and in the call for bids for the contract,
11 what is the prevailing hourly rate of wages in the locality for each type of
12 workman needed to execute the contract and also the general prevailing rate for
13 legal holiday and overtime work. It shall be mandatory upon the contractor to
14 whom the contract is awarded and upon any subcontractor under him, to pay not
15 less than the specified rates to all workmen employed by them in the execution

16 of the contract. The public body awarding the contract shall cause to be inserted
17 in the contract a stipulation to the effect that not less than the prevailing hourly
18 rate of wages shall be paid to all workmen performing work under the contract.
19 [It shall also require in all contractor's bonds that the contractor include such
20 provisions as will guarantee the faithful performance of the prevailing hourly
21 wage clause as provided by contract.] The [contractor] **employer** shall forfeit as
22 a penalty to the state, county, city and county, city, town, district or other
23 political subdivision on whose behalf the contract is made or awarded [ten] **one**
24 **hundred** dollars for each workman employed, for each calendar day, or portion
25 thereof, such workman is paid less than the said stipulated rates for any work
26 done under said contract, by him or by any subcontractor under him, and the said
27 public body awarding the contract shall cause to be inserted in the contract a
28 stipulation to this effect. It shall be the duty of such public body awarding the
29 contract, and its agents and officers, to take cognizance of all complaints of all
30 violations of the provisions of sections 290.210 to 290.340 committed in the course
31 of the execution of the contract, and, when making payments to the contractor
32 becoming due under said contract, to withhold and retain therefrom all sums and
33 amounts due and owing as a result of any violation of sections 290.210 to 290.340.
34 It shall be lawful for any contractor to withhold from any subcontractor under
35 him sufficient sums to cover any penalties withheld from him by the awarding
36 body on account of said subcontractor's failure to comply with the terms of
37 sections 290.210 to 290.340, and if payment has already been made to him, the
38 contractor may recover from him the amount of the penalty in a suit at law.

39 **2. In determining whether a violation of sections 290.210 to**
40 **290.340 has occurred, and whether the penalty under subsection 1 of**
41 **this section shall be imposed, it shall be the duty of the department to**
42 **investigate any claim of violation. Upon completing such investigation,**
43 **the department shall notify the employer of its findings. If the**
44 **department concludes that a violation of sections 290.210 to 290.340 has**
45 **occurred and a penalty may be due, the department shall notify the**
46 **employer of such finding by providing a notice of penalty to the**
47 **employer. Such penalty shall not be due until forty-five days after the**
48 **date of the notice of the penalty.**

49 **3. The employer shall have the right to dispute such notice of**
50 **penalty in writing to the department within forty-five days of the date**
51 **of the notice. Upon receipt of this written notice of dispute, the**

52 department shall notify the employer of the right to resolve such
53 dispute through arbitration. The state and the employer shall submit
54 to an arbitration process to be established by the department by rule,
55 and in conformance with the guidelines and rules of the American
56 Arbitration Association or other arbitration process mutually agreed
57 upon by the employer and the state. If at any time prior to the
58 department pursuing an enforcement action to enforce the monetary
59 penalty provisions of subsection 1 of this section against the employer,
60 the employer pays the backwages as determined by either the
61 department or the arbitrator, the department shall be precluded from
62 initiating any enforcement action to impose the monetary penalty
63 provisions of subsection 1 of this section.

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

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

Section 1. Notwithstanding the provisions of section 1.140, RSMo,
2 the provisions of sections 290.095 and 290.250, RSMo, and sections
3 34.203 to 34.216, RSMo, of this act shall not be severable. In the event
4 a court of competent jurisdiction rules that any part of this act is
5 unenforceable, the entire act shall be rendered null and void.

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