

FIRST REGULAR SESSION

HOUSE BILL NO. 320

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FISHER.

1096L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.210, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, and to enact in lieu thereof six new sections relating to public construction, with existing penalty provisions.

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

Section A. Sections 290.210, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 290.210, 290.250, 290.260, 290.262, 290.290, and 290.340, to read as follows: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.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (5) "Prevailing hourly rate of wages" means the **average rate of** wages paid generally,
16 in the locality in which the public works is being performed, to workmen engaged in work of a
17 similar character including the basic hourly rate of pay and the amount of the rate of
18 contributions [irrevocably made by a contractor or subcontractor to a trustee or] to a [third person
19 pursuant to a] fund, plan or program, and the amount of the rate of costs to the contractor or
20 subcontractor which may be reasonably anticipated in providing benefits to workmen and
21 mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or
22 program which was communicated in writing to the workmen affected, for medical or hospital
23 care, pensions on retirement or death, compensation for injuries or illness resulting from
24 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits,
25 life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay,
26 for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe
27 benefits, but only where the contractor or subcontractor is not required by other federal or state
28 law to provide any of the benefits; provided, that the obligation of a contractor or subcontractor
29 to make payment in accordance with the prevailing wage determinations of the department,
30 insofar as sections 290.210 to 290.340 are concerned, may be discharged by the making of
31 payments in cash, [by the making of irrevocable] contributions to [trustees or third persons as
32 provided herein, by the assumption of] an enforceable commitment to bear the costs of a plan
33 or program as provided herein, or any combination thereof, where the aggregate of such
34 payments, contributions and costs is not less than the rate of pay plus the other amounts as
35 provided herein. **If the department is unable to determine the prevailing hourly rate of**
36 **wages in a particular locality by means of wage surveys for workmen engaged in work of**
37 **a similar character, the prevailing hourly rate of wages for that locality shall be deemed:**

38 (a) **The median hourly wage estimate for the construction and extraction**
39 **occupational code most closely resembling the occupational title as published in the latest**
40 **United States Bureau of Labor Statistics published on or before December thirty-first of**
41 **the year of the survey for that respective locality by Metropolitan and Non-Metropolitan**
42 **Area Occupational Employment Wage Estimate; or**

43 (b) **If no such rate can be determined under paragraph (a) of this subdivision, the**
44 **median hourly wage estimate for occupational code 47-0000 in the construction and**
45 **extraction occupational code, published in the latest United States Bureau of Labor**
46 **Statistics publication on or before December thirty-first of the year of the survey shall be**
47 **the prevailing wage for such occupational title;**

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

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

57 (8) "Workmen" means laborers, workmen and mechanics.

290.250. 1. Every public body authorized to contract for or construct public works
2 before advertising for bids or undertaking such construction shall request the department to
3 determine the prevailing rates of wages for workmen for the class or type of work called for by
4 the public works, in the locality where the work is to be performed. The department shall
5 determine the prevailing hourly rate of wages in the locality in which the work is to be performed
6 for each type of workman required to execute the contemplated contract and such determination
7 or schedule of the prevailing hourly rate of wages shall be attached to and made a part of the
8 specifications for the work. The public body shall then specify in the resolution or ordinance and
9 in the call for bids for the contract what is the prevailing hourly rate of wages in the locality for
10 each type of workman needed to execute the contract and also the general prevailing rate for
11 legal holiday and overtime work. It shall be mandatory upon the contractor to whom the contract
12 is awarded and upon any subcontractor under him to pay not less than the specified rates to all
13 workmen employed by them in the execution of the contract. The public body awarding the
14 contract shall cause to be inserted in the contract a stipulation to the effect that not less than the
15 prevailing hourly rate of wages shall be paid to all workmen performing work under the contract.
16 The employer shall forfeit as a penalty to the state, county, city and county, city, town, district
17 or other political subdivision on whose behalf the contract is made or awarded one hundred
18 dollars for each workman employed, for each calendar day, or portion thereof, such workman
19 is paid less than the said stipulated rates for any work done under said contract, by him or by any
20 subcontractor under him, and the said public body awarding the contract shall cause to be
21 inserted in the contract a stipulation to this effect. It shall be the duty of such public body
22 awarding the contract, and its agents and officers, to take cognizance of all complaints of all
23 violations of the provisions of sections 290.210 to 290.340 committed in the course of the
24 execution of the contract, and, when making payments to the contractor becoming due under said
25 contract, to withhold and retain therefrom all sums and amounts due and owing as a result of any
26 violation of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold from
27 any subcontractor under him sufficient sums to cover any penalties withheld from him by the
28 awarding body on account of said subcontractor's failure to comply with the terms of sections

29 290.210 to 290.340, and if payment has already been made to him, the contractor may recover
30 from him the amount of the penalty in a suit at law.

31 2. In determining whether a violation of sections 290.210 to 290.340 has occurred, [and
32 whether the penalty under subsection 1 of this section shall be imposed,] it shall be the duty of
33 the department to investigate any claim of violation. Upon completing such investigation, the
34 department shall notify the employer of its findings. If the department concludes that a violation
35 of sections 290.210 to 290.340 has occurred and a penalty may be due, the department shall
36 notify the employer of such finding by providing a notice of [penalty] **violation** to the employer.
37 [Such penalty shall not be due until forty-five days after the date of the notice of the penalty.]

38 3. The employer shall have the right to dispute such notice of [penalty] **violation** in
39 writing to the department within forty- five days of the date of the notice. Upon receipt of this
40 written notice of dispute, the department shall notify the employer of the right to resolve such
41 dispute through arbitration. The state and the employer shall submit to an arbitration process to
42 be established by the department by rule, and in conformance with the guidelines and rules of
43 the American Arbitration Association or other arbitration process mutually agreed upon by the
44 employer and the state. If at any time prior to the department pursuing an enforcement action
45 [to enforce the monetary penalty provisions of subsection 1 of this section] against the employer,
46 the employer pays the back wages as determined by either the department or the arbitrator, the
47 department shall be precluded from initiating any enforcement action to impose the monetary
48 penalty provisions of subsection 1 of this section **and no other administrative, civil, or**
49 **criminal action shall be taken against the contractor, subcontractor, employee, agent,**
50 **owner, or principal of the employer. Any dispute resolved under this subsection prior to**
51 **the department initiating an enforcement action shall not be considered a violation for the**
52 **purposes of section 290.330.**

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

59 5. Nothing in this section shall be interpreted as precluding an action for enforcement
60 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
2 and determine the prevailing hourly rate of wages in the localities. A determination applicable
3 to every locality to be contained in a general wage order shall be made annually on or before July
4 first of each year for the Missouri state highways and transportation commission and shall remain

5 in effect until superseded by a new general wage order. [In determining] **To determine the**
6 prevailing rates **of wages**, the department shall ascertain [and consider the applicable wage rates
7 established by collective bargaining agreements, if any, and] **the average of** the rates that are
8 paid generally within the locality.

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

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

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

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

26 6. Within twenty days of the conclusion of the hearing, the department must rule on the
27 written objection and make the final determination that it believes the evidence warrants.
28 Immediately, the department shall file a certified copy of its final determination with the
29 secretary of state and with the department and shall serve a copy of the final determination on
30 all parties to the proceedings by personal service or by registered mail.

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

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

40 9. All proceedings in any court affecting a determination of the department under the
41 provisions of sections 290.210 to 290.340 shall have priority in hearing and determination over
42 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
2 annually investigate and determine the prevailing hourly rate of wages in each locality for each
3 separate occupational title. A final determination applicable to every locality to be contained in
4 an annual wage order shall be made annually on or before July first of each year and shall remain
5 in effect until superseded by a new annual wage order or as otherwise provided in this section.
6 [In determining] **To determine the prevailing rates of wages**, the department shall ascertain [and
7 consider the applicable wage rates established by collective bargaining agreements, if any, and]
8 **the average of** the rates that are paid generally within the locality, and shall, by March tenth of
9 each year, make an initial determination for each occupational title within the locality.

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

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

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

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

28 6. Within twenty days of the conclusion of the hearing, the department shall rule on the
29 written objection and make the final determination that it believes the evidence warrants.
30 Immediately, the department shall file a certified copy of its final determination with the
31 secretary of state and with the department and shall serve a copy of the final determination on
32 all parties to the proceedings by personal service or by registered mail.

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

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

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

55 10. In addition to all other reporting requirements of sections 290.210 to 290.340, each
56 public body which is awarding a contract for a public works project shall, prior to beginning of
57 any work on such public works project, notify the department, on a form prescribed by the
58 department, of the scope of the work to be done, the various types of craftsmen who will be
59 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
2 works shall keep full and accurate records clearly indicating the names, occupations and crafts
3 of every workman employed by them in connection with the public work together with an
4 accurate record of the number of hours worked by each workman and the actual wages paid
5 therefor. The payroll records required to be so kept shall be open to inspection by any authorized
6 representative of the contracting public body or of the department at any reasonable time and as
7 often as may be necessary and such records shall not be destroyed or removed from the state for
8 the period of one year following the completion of the public work in connection with which the
9 records are made.

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

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

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

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