

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1041
97TH GENERAL ASSEMBLY

2106H.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.210, 290.260, and 290.262, RSMo, and to enact in lieu thereof five new sections relating to prevailing wages.

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

Section A. Sections 290.210, 290.260, and 290.262, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 290.210, 290.253, 290.260, 290.262, and 290.285, to read as follows:

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

(1) **“Collective bargaining agreement” includes 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.**

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

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

[(3)] (4) **“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.**

(5) "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

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.

18 skilled workmen to construct the public works efficiently and properly, "locality" may include
19 two or more counties adjacent to the one in which the work or construction is to be performed
20 and from which such workers may be obtained in sufficient numbers to perform the work, and
21 that, with respect to contracts with the state highways and transportation commission, "locality"
22 may be construed to include two or more adjacent counties from which workmen may be
23 accessible for work on such construction].

24 [(4)] (6) "Maintenance work" means the repair, but not the replacement, of existing
25 facilities when the size, type or extent of the existing facilities is not thereby changed or
26 increased.

27 [(5)] (7) "Prevailing hourly rate of wages" means the wages paid generally, in the locality
28 in which the public works is being performed, to workmen engaged in work of a similar
29 character including the basic hourly rate of pay and the amount of the rate of contributions
30 irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a
31 fund, plan or program, and the amount of the rate of costs to the contractor or subcontractor
32 which may be reasonably anticipated in providing benefits to workmen and mechanics pursuant
33 to an enforceable commitment to carry out a financially responsible plan or program which was
34 communicated in writing to the workmen affected, for medical or hospital care, pensions on
35 retirement or death, compensation for injuries or illness resulting from occupational activity, or
36 insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability
37 and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of
38 apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where
39 the contractor or subcontractor is not required by other federal or state law to provide any of the
40 benefits; provided, that the obligation of a contractor or subcontractor to make payment in
41 accordance with the prevailing wage determinations of the department, insofar as sections
42 290.210 to 290.340 are concerned, may be discharged by the making of payments in cash, by the
43 making of irrevocable contributions to trustees or third persons as provided herein, by the
44 assumption of an enforceable commitment to bear the costs of a plan or program as provided
45 herein, or any combination thereof, where the aggregate of such payments, contributions and
46 costs is not less than the rate of pay plus the other amounts as provided herein.

47 [(6)] (8) "Public body" means the state of Missouri or any officer, official, authority,
48 board or commission of the state, or other political subdivision thereof, or any institution
49 supported in whole or in part by public funds.

50 [(7)] (9) "Public works" means all fixed works constructed for public use or benefit or
51 paid for wholly or in part out of public funds. It also includes any work done directly by any
52 public utility company when performed by it pursuant to the order of the public service
53 commission or other public authority whether or not it be done under public supervision or

54 direction or paid for wholly or in part out of public funds when let to contract by said utility. It
55 does not include any work done for or by any drainage or levee district.

56 ~~[(8)]~~ (10) "Workmen" means laborers, workmen and mechanics.

**290.253. 1. No contractor or subcontractor shall contract with or construct public
2 works for any public body, other than the Missouri state highways and transportation
3 commission, unless such contractor or subcontractor has participated in the wage survey
4 process utilized by the department pursuant to section 290.262 to determine the prevailing
5 hourly rate of wages in Missouri localities for construction work, other than highway
6 construction work, by completing and submitting the survey forms to the department
7 evidencing all the hours worked by and all wage rates paid to its workers in each
8 occupational title for construction work during the previous calendar year unless such
9 contractor or subcontractor has not engaged in any construction work which the
10 contractor shall establish by providing an affidavit or other sworn statement so attesting
11 to the department. The department shall provide a contractor or subcontractor with proof
12 of compliance.**

13 **2. Survey forms containing wages and hours submitted to the department under
14 this section shall not be considered public records under chapter 610.**

15 **3. The provisions of this section shall become effective on January 1, 2015.**

290.260. 1. The department, as it deems necessary, shall from time to time investigate
2 and determine the prevailing hourly rate of wages **for heavy and highway construction work**
3 in the localities. **In doing so, the department shall accept and consider information**
4 **regarding local wage rates that is submitted in either paper or electronic formats.** A
5 determination applicable to every locality to be contained in a general wage order shall be made
6 annually on or before July first of each year for the Missouri state highways and transportation
7 commission and shall remain in effect until superseded by a new general wage order. [In
8 determining prevailing rates, the department shall ascertain and consider the applicable wage
9 rates established by collective bargaining agreements, if any, and the rates that are paid generally
10 within the locality.]

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

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

18 4. Within thirty days of the receipt of the objection, the department shall set a date for
19 a hearing on the objection. The date for the hearing shall be within sixty days of the receipt of
20 the objection. Written notice of the time and place of the hearing shall be given to the objectors
21 at least ten days 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 must 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 is subject
34 to review in accordance with the provisions of chapter 536. Any person affected, whether or not
35 the person participated in the proceedings resulting in the final determination, may have the
36 decision of the department reviewed. The filing of the final determination with the secretary of
37 state shall be considered a service of the final determination on persons not participating in the
38 administrative proceedings resulting in the final determination.

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

42 9. All proceedings in any court affecting a determination of the department under the
43 provisions of sections 290.210 to 290.340 shall have priority in hearing and determination over
44 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. **In doing so, the department shall accept and consider**
4 **information regarding local wage rates that is submitted in either paper or electronic**
5 **format.** A final determination applicable to every locality to be contained in an annual wage
6 order shall be made annually on or before July first of each year and shall remain in effect until
7 superseded by a new annual wage order or as otherwise provided in this section. [In determining
8 prevailing rates,]

9 **(1) With respect only to third and fourth class counties, the prevailing rate for all**
10 **work other than the work for which rates are determined under section 290.260 for an**
11 **occupational title within a locality shall be determined in the following manner:**

12 **(a) The total number of non-collective bargaining agreement hours worked for the**
13 **time period in that occupational title in the locality shall be considered;**

14 **(b) The total number of collective bargaining agreement hours worked for the time**
15 **period in that occupational title in the locality shall be considered;**

16 **(c) If the total number of non-collective bargaining agreement hours in the**
17 **aggregate exceeds the total number of collective bargaining agreement hours in the**
18 **aggregate, then a non-collective bargaining agreement rate shall prevail. If the total**
19 **number of collective bargaining agreement hours in the aggregate exceeds the total number**
20 **of non-collective bargaining agreement hours in the aggregate, then a collective bargaining**
21 **agreement rate shall prevail; and**

22 **(d) If a non-collective bargaining agreement rate prevails, the rate to be determined**
23 **as the prevailing rate shall be the wage rate most commonly paid of the non-collective**
24 **bargaining agreement rates as measured by the number of hours worked at each wage rate**
25 **at a non-collective bargaining agreement rate, for that occupational title within the locality.**
26 **If a collective bargaining agreement rate prevails, the rate to be determined as the**
27 **prevailing rate shall be the wage most commonly paid of the collective bargaining**
28 **agreement rates as measured by the number of hours worked at each collective bargaining**
29 **agreement wage rate for that occupational title within the locality;**

30 **(2) Except for third and fourth class counties the prevailing wage of which shall be**
31 **calculated as described in subdivision (1) of this subsection, the prevailing rate for an**
32 **occupational title other than heavy and highway construction work in a locality shall be**
33 **the wage rate the department determines to be the most commonly paid, as measured by**
34 **the number of hours worked at each wage rate, for that occupational title within the**
35 **locality;**

36 **(3) With respect to all counties in Missouri, if no work within a particular**
37 **occupational title has been performed during the reporting period in the locality at any**
38 **wage rate, the prevailing rate for that occupational title in that locality shall be the wage**
39 **rate most commonly paid, as measured by the number of hours worked at each wage rate,**
40 **for that occupational title within all Missouri counties adjacent to that locality. For the**
41 **purposes of this section, “adjacent county” means any Missouri county having a boundary**
42 **that, at any point, touches any boundary of the locality for which the wage rate is being**
43 **determined. If no work within a particular occupational title has been performed in the**
44 **locality and its adjacent counties, the department shall ascertain and consider the applicable**

45 wage rates established by **the** collective bargaining agreements, if any, and the rates that are paid
46 generally within the locality [and] . **The department** shall, by March tenth of each year, make
47 an initial determination for each occupational title within the locality.

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

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

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

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

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

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

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

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

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

**290.285. Any public body using an employee to perform construction work,
2 including but not limited to occupational titles with a prevailing hourly rate of wages,
3 requiring training, professional registration, licensure or issuance of a professional
4 certificate must comply with all local, state, and federal laws relating to the training,
5 professional registration, licensure, or issuance of the employee's professional certificate.**

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