

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1910

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FISHER (Sponsor), HUNTER,
DETHROW AND ROARK (Co-sponsors).

Read 1st time March 1, 2006 and copies ordered printed.

Read 2nd time March 2, 2006 and referred to the Committee on Workforce Development and Workplace Safety March 9, 2006.

Reported from the Committee on Workforce Development and Workplace Safety April 4, 2006 with recommendation that the bill Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules April 6, 2006 with recommendation that the bill Do Pass.

Taken up for Perfection April 20, 2006. Bill ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

5430L.01P

AN ACT

To amend chapters 34 and 290, RSMo, by adding thereto eight new sections relating to public contracts.

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

Section A. Chapters 34 and 290, RSMo, are amended by adding thereto eight new
2 sections, to be known as sections 34.078, 34.203, 34.206, 34.209, 34.212, 34.216, 290.095, and
3 290.097, to read as follows:

**34.078. 1. Every employer doing business with the state under this chapter shall
2 require each newly hired or rehired independent contractor to fill out a federal W-9 form.
3 The forms shall be compiled, distributed, and entered into the state directory of new hires
4 in the same fashion as set forth in subsection 1 of section 285.300, RSMo.**

**5 2. An employer shall not, in an attempt to avoid tax liability or reporting
6 requirements for any employee, denote or treat such employee as an independent**

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.

7 contractor, contract labor, or any other term or category implying the absence of an
8 employment relationship.

9 3. Any employer who misclassifies an employee as an independent contractor or
10 otherwise misclassifies the employee's employment status shall be fined an amount equal
11 to the tax due on the employee's taxable wages or an amount equal to three times the tax
12 due on the employee's taxable wages if it is shown that the employer's failure to report
13 wages is due to bad faith.

14 4. An employer shall not terminate or in any manner discriminate against an
15 employee because the employee has communicated to the employer the intent to seek
16 reclassification as an employee instead of an independent contractor or has communicated
17 the intent to file an action alleging a violation of this section.

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

 34.206. The purpose of sections 34.203 to 34.216 is to fulfill the state's proprietary
2 objectives in maintaining and promoting the economical, nondiscriminatory, and efficient
3 expenditures of public funds in connection with publicly funded or assisted construction
4 projects. Nothing in sections 34.203 to 34.216 shall prohibit employers or other parties
5 covered by the National Labor Relations Act from entering into agreements or engaging
6 in any other activity arguably protected by law, nor shall any aspect of sections 34.203 to
7 34.216 be interpreted in such a way as to interfere with the labor relations of parties
8 covered by the National Labor Relations Act.

 34.209. The state, any agency of the state, or any instrumentality thereof, when
2 engaged in procuring or letting contracts for construction of a project that is funded by
3 greater than fifty percent of state funds, shall ensure that bid specification, project
4 agreements, and other controlling documents entered into, required, or subject to approval
5 by the state, agency, or instrumentality do not:

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

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

 34.212. 1. The state, any agency of the state, or any instrumentality thereof shall
2 not issue grants or enter into cooperative agreements for construction projects, a condition
3 of which requires that bid specifications, project agreements, or other controlling

4 documents pertaining to the grant or cooperative agreement contain any of the elements
5 specified in section 34.209.

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

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

7 2. The state or a political subdivision of the state may enter into a union-only
8 project labor agreement for the procurement of construction services, except as provided
9 in section 34.209, on a project-by-project basis only on the condition that:

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

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

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

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

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

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

25 (3) No fewer than fourteen days but no more than thirty days following publication
26 of the notice of a public hearing, the state or political subdivision shall conduct a public
27 hearing on whether to proceed with its intent to require a union-only project labor
28 agreement;

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

32 3. (1) Any interested party may, within thirty days of the determination of the state
33 or political subdivision as set forth in subdivision (4) of subsection 2 of this section, appeal
34 to the labor and industrial relations commission for a determination as to whether the state
35 or political subdivision complied with subsection 2 of this section for a union-only project
36 labor agreement as defined in subsection 1 of this section.

37 (2) The labor and industrial relations commission shall consider the appeal in
38 subdivision (1) of this subsection under a rational basis standard of review.

39 (3) The labor and industrial relations commission shall hold a hearing on the
40 appeal within sixty days of the filing of the appeal. The commission shall issue its decision
41 within ninety days of the filing date of the appeal.

42 (4) Any aggrieved party from the labor and industrial relations commission
43 decision set forth in subdivision (3) of this subsection may file an appeal with the circuit
44 court of Cole County within thirty days of the commission's decision.

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

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

11 3. The provisions of this section shall not apply if the provisions are in conflict with
12 the National Labor Relations Act.

 290.097. 1. Any interested person, employee, or an aggrieved contractor or
2 subcontractor may allege a violation of subsection 1 of section 290.095.

3 2. If the division of labor standards determines that a violation of subsection 1 of
4 section 290.095 has occurred, the division shall assess and collect a penalty on behalf of the
5 public body. In determining the dollar amount owed to the public body, the division shall
6 calculate double the dollar amount per hour that the wage subsidy, bid supplement or
7 rebate has reduced the wage rate paid by the employer below the prevailing wage rate as
8 provided in section 290.262 for each hour that work was performed.

9 **3. If the division finds that the complaint filed under this section is frivolous and**
10 **utterly without merit, or exhibits a pattern of harassing conduct on the part of the filing**
11 **party, the commission may estop the filing party from filing further complaints against the**
12 **charged party for a period of up to one year.**

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