

SECOND REGULAR SESSION

HOUSE BILL NO. 1926

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HENDERSON.

5553H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.210, 290.230, 290.240, 290.250, 290.262, and 290.330, RSMo, and to enact in lieu thereof seven 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Section A. Sections 290.210, 290.230, 290.240, 290.250, 290.262, and 290.330, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 290.210, 290.230, 290.235, 290.240, 290.250, 290.262, and 290.330, to read as follows:

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

(1) ~~["Adjacent county", any Missouri county of the third or fourth classification having a boundary that, at any point, touches any boundary of the locality for which the wage rate is being determined;~~

~~—(2)]~~ "Collective bargaining agreement" means 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;

~~[(3)]~~ (2) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair;

~~[(4)]~~ (3) "Department" means the department of labor and industrial relations;

~~[(5)]~~ (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

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.

16 representative of employees of employers engaged in the construction industry, which entity or
17 affiliated entity has ever had a collective bargaining agreement which determined an
18 occupational title wage rate;

19 ~~[(6)]~~ (5) "Locality" means the county where the physical work upon public works is
20 performed;

21 ~~[(7)]~~ (6) "Maintenance work" means the repair, but not the replacement, of existing
22 facilities when the size, type or extent of the existing facilities is not thereby changed or
23 increased;

24 ~~[(8)]~~ (7) "Prevailing hourly rate of wages" means the wages paid generally, in the locality
25 in which the public works is being performed, to workmen engaged in work of a similar
26 character including the basic hourly rate of pay and the amount of the rate of contributions
27 irrevocably made to a fund, plan or program, and the amount of the rate of costs to the contractor
28 or subcontractor which may be reasonably anticipated in providing benefits to workmen and
29 mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or
30 program which was communicated in writing to the workmen affected, for medical or hospital
31 care, pensions on retirement or death, compensation for injuries or illness resulting from
32 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits,
33 life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay,
34 for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe
35 benefits, but only where the contractor or subcontractor is not required by other federal or state
36 law to provide any of the benefits; provided, that the obligation of a contractor or subcontractor
37 to make payment in accordance with the prevailing wage determinations of the department,
38 insofar as sections 290.210 to 290.340 are concerned, may be discharged by the making of
39 payments in cash, by the making of irrevocable contributions by the assumption of an
40 enforceable commitment to bear the costs of a plan or program as provided herein, or any
41 combination thereof, where the aggregate of such payments, contributions and costs is not less
42 than the rate of pay plus the other amounts as provided herein;

43 ~~[(9)] "Previous six annual wage order reporting periods" means the current annual wage~~
44 ~~order reporting period under consideration for wage rate determinations and the five immediately~~
45 ~~preceding annual wage order reporting periods;~~

46 ~~———~~(10) (8) "Public body" means the state of Missouri or any officer, official, authority,
47 board or commission of the state, or other political subdivision thereof, or any institution
48 supported in whole or in part by public funds;

49 ~~[(11)]~~ (9) "Public works" means all fixed works constructed for public use or benefit or
50 paid for wholly or in part out of public funds. It also includes any work done directly by any
51 public utility company when performed by it pursuant to the order of the public service

52 commission or other public authority whether or not it be done under public supervision or
53 direction or paid for wholly or in part out of public funds when let to contract by said utility. It
54 does not include any work done for or by any drainage or levee district;

55 ~~[(12)]~~ (10) "Workmen" means laborers, workmen and mechanics.

290.230. 1. Not less than the prevailing hourly rate of wages for work of a similar
2 character in the locality in which the work is performed, and not less than the prevailing hourly
3 rate of wages for legal holiday and overtime work, shall be paid to all workmen employed by or
4 on behalf of any public body engaged in the construction of public works, exclusive of
5 maintenance work. Only such workmen as are directly employed by contractors or
6 subcontractors in actual construction work on the site of the building or construction job shall
7 be deemed to be employed upon public works. Any such workman who agrees in writing to
8 volunteer his or her labor without pay shall not be deemed to be employed upon public works,
9 and shall not be entitled to the prevailing hourly rate of wages. For the purposes of this section,
10 the term "workman who agrees in writing to volunteer his or her labor without pay" shall mean
11 a workman who volunteers his or her labor without any promise of benefit or remuneration for
12 such voluntary activity, and who is not a prisoner in any jail or prison facility and who is not
13 performing community service pursuant to disposition of a criminal case against him **or her**, and
14 is not otherwise employed for compensation at any time in the construction or maintenance work
15 on the same public works for which the workman is a volunteer. Under no circumstances may
16 an employer force, compel or otherwise intimidate an employee into performing work otherwise
17 paid by a prevailing wage as a volunteer.

18 2. When the hauling of materials or equipment includes some phase of construction other
19 than the mere transportation to the site of the construction, workmen engaged in this dual
20 capacity shall be deemed employed directly on public works.

21 **3. (1) The provisions of sections 290.210 to 290.340 shall not apply to the**
22 **construction of public works for which the engineer's estimate for the total project cost is**
23 **in the amount of twenty-five thousand dollars or less for all occupational titles.**

24 **(2) The total project cost shall be based upon the entire project and not individual**
25 **projects within a larger project.**

26 **(3) The total project cost shall include the value of work performed on the project**
27 **by every person paid by a contractor or subcontractor for that person's work on the**
28 **project. The total project cost shall additionally include all materials and supplies**
29 **purchased for the project.**

30 **4. A public body shall not divide a project into multiple contracts for the purpose**
31 **of lowering the total project cost below the threshold described in subsection 3 of this**
32 **section. If any project for which the engineer's estimate for the total project cost is in the**

33 amount of twenty-five thousand dollars or less for all occupational titles subsequently
34 becomes subject to any change orders that increase the total project cost so that it exceeds
35 twenty-five thousand dollars, each workman shall be paid the applicable prevailing wage
36 rate for all work covered by the original contract as well as for any change orders, as
37 provided in sections 290.210 to 290.340.

38 5. (1) Notwithstanding any provision of law to the contrary, for the purposes of
39 construction of public works for which the engineer's estimate for the total project cost is
40 in the amount of twenty-five thousand dollars or less for all occupational titles, public
41 bodies shall be exempt from any law requiring the use of competitive bids.

42 (2) In selecting a contractor for the construction of public works for which the
43 engineer's estimate for the total project cost is in the amount of twenty-five thousand
44 dollars or less for all occupational titles, a public body may require submission of a
45 statement of qualification that shall include, but not be limited to:

46 (a) Demonstrated ability to perform projects comparable in design, scope, and
47 complexity;

48 (b) References of owners for whom similar projects have been performed;

49 (c) Qualifications of personnel who intend to manage the design and construction
50 aspects of the project; and

51 (d) The names and qualifications of the primary design consultants and the
52 primary contractors with whom the contractor proposes to subcontract or enter into a joint
53 venture.

54 (3) The contractor shall not replace an identified contractor, subcontractor, design
55 consultant, or subconsultant without the written approval of the public body.

56 (4) A public body shall have the discretion to disqualify any contractor who, in the
57 public body's opinion, lacks the minimum qualifications required to perform the project.

58 6. Every public body authorized to contract for or construct public works under
59 sections 290.210 to 290.340 shall comply with the provisions of sections 34.203 to 34.218.

209.235. 1. Employers may use apprentices and trainees participating in programs
2 registered with the United States Department of Labor or certified by the United States
3 Department of Transportation on public works projects, provided such workers are paid
4 in accordance with sections 290.210 to 290.340.

5 2. Employers may use entry-level workers for on-the-job training periods for the
6 purpose of facilitating qualification for or acceptance into an apprenticeship or training
7 program. The prevailing wage rate for on-the-job training workers shall be equal to fifty
8 percent of the prevailing wage rate for a journeyman worker under the appropriate
9 occupational title for a specific locality.

10 **3. The combined total of on-the-job training workers, apprentices, and trainees**
11 **shall not exceed a one-to-one ratio with the number of journeyman workers in any**
12 **occupational title on a public works project subject to sections 290.210 to 290.340.**

290.240. 1. The department shall inquire diligently [~~as to~~] **into complaints regarding**
2 any violation of sections 290.210 to 290.340, shall institute actions for penalties herein
3 prescribed, and shall enforce generally the provisions of sections 290.210 to 290.340.
4 **Complaints regarding any violation of sections 290.210 to 290.340 shall be filed with the**
5 **department. The following interested parties are the only parties allowed to file such**
6 **complaints with the department:**

7 **(1) Any decision-making public servant for a public body for which a public works**
8 **project is being performed, if the complaint is against the contractor or subcontractor for**
9 **the project;**

10 **(2) Any contractor or subcontractor, if the complaint is against a contractor**
11 **awarded a contract by a public body; and**

12 **(3) Any workman who alleges a violation of his or her rights under sections 290.210**
13 **to 290.340.**

14 2. The department may establish rules and regulations for the purpose of carrying out the
15 provisions of sections 290.210 to 290.340.

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 **or her** to pay not less than the specified rates
13 to all workmen employed by them in the execution of the contract. The public body awarding
14 the contract shall cause to be inserted in the contract a stipulation to the effect that not less than
15 the prevailing hourly rate of wages shall be paid to all workmen performing work under the
16 contract. The employer shall forfeit as a penalty to the state, county, city and county, city, town,
17 district or other political subdivision on whose behalf the contract is made or awarded one
18 hundred dollars for each workman employed, for each calendar day, or portion thereof, such

19 workman is paid less than the said stipulated rates for any work done under said contract, by him
20 **or her** or by any subcontractor under him **or her**, and the said public body awarding the contract
21 shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such
22 public body awarding the contract, and its agents and officers, to take cognizance of all
23 complaints of all violations of the provisions of sections 290.210 to 290.340 committed in the
24 course of the execution of the contract, and, when making payments to the contractor becoming
25 due under said contract, to withhold and retain therefrom all sums and amounts due and owing
26 as a result of any violation of sections 290.210 to 290.340. It shall be lawful for any contractor
27 to withhold from any subcontractor under him **or her** sufficient sums to cover any penalties
28 withheld from him **or her** by the awarding body on account of said subcontractor's failure to
29 comply with the terms of sections 290.210 to 290.340, and if payment has already been made to
30 him **or her**, the contractor may recover from him **or her** the amount of the penalty in a suit at
31 law.

32 2. In determining whether a violation of sections 290.210 to 290.340 has occurred, and
33 whether the penalty under subsection 1 of this section shall be imposed, it shall be the duty of
34 the department to investigate any ~~claim of violation~~ **complaint made by an interested party**
35 **listed under section 290.240**. Upon completing such investigation, the department shall notify
36 the employer of its findings. If the department concludes that a violation of sections 290.210 to
37 290.340 has occurred and a penalty may be due, the department shall notify the employer of such
38 finding by providing a notice of penalty to the employer. Such penalty shall not be due until
39 forty-five days after the date of the notice of the penalty.

40 3. The employer shall have the right to dispute such notice of penalty in writing to the
41 department within forty-five days of the date of the notice. Upon receipt of this written notice
42 of dispute, the department shall notify the employer of the right to resolve such dispute through
43 arbitration. The state and the employer shall submit to an arbitration process to be established
44 by the department by rule, and in conformance with the guidelines and rules of the American
45 Arbitration Association or other arbitration process mutually agreed upon by the employer and
46 the state. If at any time prior to the department pursuing an enforcement action to enforce the
47 monetary penalty provisions of subsection 1 of this section against the employer, the employer
48 pays the back wages as determined by either the department or the arbitrator, the department
49 shall be precluded from initiating any enforcement action to impose the monetary penalty
50 provisions of subsection 1 of this section.

51 4. If the employer fails to pay all wages due as determined by the arbitrator within
52 forty-five days following the conclusion of the arbitration process, or if the employer fails to
53 exercise the right to seek arbitration, the department may then pursue an enforcement action to
54 enforce the monetary penalty provisions of subsection 1 of this section against the employer. If

55 the court orders payment of the penalties as prescribed in subsection 1 of this section, the
56 department shall be entitled to recover its actual cost of enforcement from such penalty amount.

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

290.262. 1. Except as otherwise provided in section 290.260, the department shall
2 annually determine the prevailing hourly rate of wages in each locality for each separate
3 occupational title. In doing so, the department shall accept and consider information regarding
4 local wage rates that is submitted in either paper or electronic formats. A final determination
5 applicable to every locality to be contained in an annual wage order shall be made annually on
6 or before July first of each year and shall remain in effect until superseded by a new annual wage
7 order or as otherwise provided in this section. The department shall, by March tenth of each
8 year, make an initial determination for each occupational title within the locality.

9 2. The prevailing wage rate for an occupational title in a locality shall~~], with the~~
10 ~~exception of localities that are counties of the third and fourth classification and any county of~~
11 ~~the second classification with more than fifty-eight thousand but fewer than sixty-five thousand~~
12 ~~inhabitants,]~~ be the wage rate most commonly paid, as measured by the number of hours worked
13 at each wage rate, for that occupational title within that locality. ~~[In determining such prevailing~~
14 ~~wage rates, the department shall ascertain and consider the applicable wage rates established by~~
15 ~~collective bargaining agreements, if any, when no wages were reported.]~~

16 3. ~~[With respect only to localities that are counties of the third and fourth classification~~
17 ~~and any county of the second classification with more than fifty-eight thousand but fewer than~~
18 ~~sixty-five thousand inhabitants,]~~ (1) The prevailing wage rate for an occupational title within
19 ~~[such]~~ any locality shall be determined in the following manner:

20 ~~[(1) The total number of hours worked that are not paid pursuant to a collective~~
21 ~~bargaining agreement for the time period in that occupational title in the locality and the total~~
22 ~~number of hours worked that are paid pursuant to a collective bargaining agreement for the time~~
23 ~~period in that occupational title in the locality shall be considered;~~

24 ~~——(2)]~~ (a) If the total number of **reportable** hours that are not paid pursuant to a collective
25 bargaining agreement, in the aggregate, exceeds the total number of **reportable** hours that are
26 paid pursuant to such an agreement, in the aggregate, then the prevailing wage rate shall be the
27 rate most commonly paid that is not paid pursuant to a collective bargaining agreement as
28 measured by the number of **reportable** hours worked at such rate for that occupational title
29 within the locality;

30 ~~[(3)]~~ (b) If the total number of **reportable** hours that are paid pursuant to a collective
31 bargaining agreement, in the aggregate, exceeds the total number of **reportable** hours that are
32 not paid pursuant to such an agreement, in the aggregate, then the prevailing wage rate shall be

33 the rate most commonly paid that is paid pursuant to a collective bargaining agreement as
34 measured by the number of **reportable** hours worked at such rate for that occupational title
35 within the locality;

36 ~~[(4) If no work within a particular occupational title has been performed in a locality at
37 any wage rate, the prevailing wage rate for that occupational title in that locality shall be
38 determined in the following manner:~~

39 ~~—— (a) If wages were reported for an occupational title within a locality within the previous
40 six annual wage order reporting periods and the prevailing wage rate was determined by a
41 collective bargaining agreement by hours worked pursuant to such agreement in the most recent
42 annual wage order reporting period where such wages were reported, then the wage rate paid
43 pursuant to the current collective bargaining agreement shall be the prevailing rate for that
44 occupational title within the locality;~~

45 ~~—— (b) If wages were reported for an occupational title within a locality within the previous
46 six annual wage order reporting periods and the prevailing wage rate was not determined by
47 hours worked pursuant to a collective bargaining agreement in the most recent annual wage order
48 reporting period where such wages were reported, then the wage rate paid in the most recent
49 annual wage order reporting period when such wages were reported shall be the prevailing wage
50 rate for that occupational title within the locality;~~

51 ~~—— (c) If no wages were reported for an occupational title within a locality within the
52 previous six annual wage order reporting periods, the department shall examine hours and wages
53 reported in all adjacent Missouri counties during the same periods. The most recent reported
54 wage rate in a given wage order period in the adjacent Missouri county with the most reported
55 hours actually worked for that occupational title in the wage period during the previous six
56 annual wage order reporting periods shall be used to determine the prevailing wage rate;~~

57 ~~—— (d) If no wages were reported for an occupational title within any adjacent Missouri
58 county within the previous six annual wage order reporting periods, then the rate paid pursuant
59 to the current collective bargaining agreement shall be the prevailing wage rate for that
60 occupational title within the locality.]~~

61 **(c) If the total number of reportable hours that are paid pursuant to a collective**
62 **bargaining agreement and the total number of reportable hours that are not paid pursuant**
63 **to a collective bargaining agreement do not equal or exceed, in the aggregate, three**
64 **hundred hours for an occupational title within a locality, there shall be no prevailing wage**
65 **rate for that wage order.**

66 **(2) For purposes of this subsection, the term "reportable hours" shall mean hours**
67 **reported by a contractor for work performed by such contractor in a particular**
68 **occupational title within a particular locality.**

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

72 5. At any time within thirty days after the certified copies of the determinations have
73 been filed with the secretary of state and the department, any person who is affected thereby may
74 object in writing to a determination or a part thereof that he **or she** deems objectionable by filing
75 a written notice with the department, stating the specific grounds of the objection. If no
76 objection is filed, the determination is final after thirty days.

77 6. After the receipt of the objection, the department shall set a date for a hearing on the
78 objection. The date for the hearing shall be within sixty days of the receipt of the objection.
79 Written notice of the time and place of the hearing shall be given to the objectors at least ten days
80 prior to the date set for the hearing.

81 7. The department at its discretion may hear each written objection separately or
82 consolidate for hearing any two or more written objections. At the hearing the department shall
83 first introduce in evidence the investigation it instituted and the other facts which were
84 considered at the time of the original determination which formed the basis for its determination.
85 The department, or the objector, or any interested party, thereafter may introduce any evidence
86 that is material to the issues.

87 8. Within twenty days of the conclusion of the hearing, the department shall rule on the
88 written objection and make the final determination that it believes the evidence warrants.
89 Immediately, the department shall file a certified copy of its final determination with the
90 secretary of state and with the department and shall serve a copy of the final determination on
91 all parties to the proceedings by personal service or by registered mail.

92 9. This final decision of the department of the prevailing wages in the locality for each
93 occupational title is subject to review in accordance with the provisions of chapter 536. Any
94 person affected, whether or not the person participated in the proceedings resulting in the final
95 determination, may have the decision of the department reviewed. The filing of the final
96 determination with the secretary of state shall be considered a service of the final determination
97 on persons not participating in the administrative proceedings resulting in the final
98 determination.

99 10. At any time before trial any person affected by the final determination of the
100 department may intervene in the proceedings to review under chapter 536 and be made a party
101 to the proceedings.

102 11. Any annual wage order made for a particular occupational title in a locality, that is
103 based on the number of hours worked under a collective bargaining agreement, may be altered
104 once each year, as provided in this subsection. The prevailing wage for each such occupational

105 title may be adjusted on the anniversary date of any collective bargaining agreement which
106 covers all persons in that particular occupational title in the locality in accordance with any
107 annual incremental wage increases set in the collective bargaining agreement. If the prevailing
108 wage for an occupational title is adjusted pursuant to this subsection, the employee's
109 representative or employer in regard to such collective bargaining agreement shall notify the
110 department of this adjustment, including the effective date of the adjustment. The adjusted
111 prevailing wage shall be in effect until the next final annual wage order is issued pursuant to this
112 section. The wage rates for any particular job, contracted and commenced within sixty days of
113 the contract date, which were set as a result of the annual or revised wage order, shall remain in
114 effect for the duration of that particular job.

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

290.330. The department after investigation, upon complaint **made by an interested**
2 **party listed under section 290.240** or upon its own initiative, shall file with the secretary of
3 state a list of the contractors and subcontractors who it finds have been prosecuted and convicted
4 for violations of sections 290.210 to 290.340 and such contractor or subcontractor, or simulations
5 thereof, shall be prohibited from contracting directly or indirectly with any public body for the
6 construction of any public works or from performing any work on the same as a contractor or
7 subcontractor for a period of one year from the date of the first conviction for such violation and
8 for a period of three years from the date of each subsequent violation and conviction thereof. No
9 public body shall award a contract for a public works to any contractor or subcontractor, or
10 simulation thereof, during the time that its name appears on said list. The filing of the notice of
11 conviction with the secretary of state shall be notice to all public bodies and their officers,
12 officials, members, agents and representatives.

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