

SECOND REGULAR SESSION

SENATE BILL NO. 927

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time January 17, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6013S.011

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.

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
2 290.330, RSMo, are repealed and seven new sections enacted in lieu thereof, to
3 be known as sections 290.210, 290.230, 290.235, 290.240, 290.250, 290.262, and
4 290.330, to read as follows:

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

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

6 (2)] "Collective bargaining agreement" means any written agreement or
7 understanding between an employer or employer association and a labor
8 organization or union which is the exclusive bargaining representative of the
9 employer's or employer association's employees pursuant to the terms of the
10 National Labor Relations Act and which agreement or understanding or
11 predecessor agreement or understanding has been used to determine an
12 occupational title wage rate;

13 [(3)] (2) "Construction" includes construction, reconstruction,
14 improvement, enlargement, alteration, painting and decorating, or major repair;

15 [(4)] (3) "Department" means the department of labor and industrial
16 relations;

17 [(5)] (4) "Labor organization" or "union" means any entity which has been

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

18 designated pursuant to the terms of the National Labor Relations Act as the
19 exclusive bargaining representative of employees of employers engaged in the
20 construction industry, which entity or affiliated entity has ever had a collective
21 bargaining agreement which determined an occupational title wage rate;

22 [(6)] (5) "Locality" means the county where the physical work upon public
23 works is performed;

24 [(7)] (6) "Maintenance work" means the repair, but not the replacement,
25 of existing facilities when the size, type or extent of the existing facilities is not
26 thereby changed or increased;

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

50 [(9)] "Previous six annual wage order reporting periods" means the current
51 annual wage order reporting period under consideration for wage rate
52 determinations and the five immediately preceding annual wage order reporting
53 periods;

54 (10) (8) "Public body" means the state of Missouri or any officer, official,
55 authority, board or commission of the state, or other political subdivision thereof,
56 or any institution supported in whole or in part by public funds;

57 [(11)] (9) "Public works" means all fixed works constructed for public use
58 or benefit or paid for wholly or in part out of public funds. It also includes any
59 work done directly by any public utility company when performed by it pursuant
60 to the order of the public service commission or other public authority whether
61 or not it be done under public supervision or direction or paid for wholly or in
62 part out of public funds when let to contract by said utility. It does not include
63 any work done for or by any drainage or levee district;

64 [(12)] (10) "Workmen" means laborers, workmen and mechanics.

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

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

25 3. (1) **The provisions of sections 290.210 to 290.340 shall not**

26 apply to the construction of public works for which the engineer's
27 estimate for the total project cost is in the amount of twenty-five
28 thousand dollars or less for all occupational titles.

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

31 (3) The total project cost shall include the value of work
32 performed on the project by every person paid by a contractor or
33 subcontractor for that person's work on the project. The total project
34 cost shall additionally include all materials and supplies purchased for
35 the project.

36 4. A public body shall not divide a project into multiple contracts
37 for the purpose of lowering the total project cost below the threshold
38 described in subsection 3 of this section. If any project for which the
39 engineer's estimate for the total project cost is in the amount of twenty-
40 five thousand dollars or less for all occupational titles subsequently
41 becomes subject to any change orders that increase the total project
42 cost so that it exceeds twenty-five thousand dollars, each workman
43 shall be paid the applicable prevailing wage rate for all work covered
44 by the original contract as well as for any change orders, as provided
45 in sections 290.210 to 290.340.

46 5. (1) Notwithstanding any provision of law to the contrary, for
47 the purposes of construction of public works for which the engineer's
48 estimate for the total project cost is in the amount of twenty-five
49 thousand dollars or less for all occupational titles, public bodies shall
50 be exempt from any law requiring the use of competitive bids.

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

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

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

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

62 (d) The names and qualifications of the primary design

63 consultants and the primary contractors with whom the contractor
64 proposes to subcontract or enter into a joint venture.

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

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

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

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

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

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

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

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

11 (2) Any contractor or subcontractor, if the complaint is against

12 **a contractor awarded a contract by a public body; and**

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

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

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

32 of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold
33 from any subcontractor under him **or her** sufficient sums to cover any penalties
34 withheld from him **or her** by the awarding **public** body on account of said
35 subcontractor's failure to comply with the terms of sections 290.210 to 290.340,
36 and if payment has already been made to him **or her**, the contractor may recover
37 from him **or her** the amount of the penalty in a suit at law.

38 2. In determining whether a violation of sections 290.210 to 290.340 has
39 occurred, and whether the penalty under subsection 1 of this section shall be
40 imposed, it shall be the duty of the department to investigate any [claim of
41 violation] **complaint made by an interested party listed under section**
42 **290.240**. Upon completing such investigation, the department shall notify the
43 employer of its findings. If the department concludes that a violation of sections
44 290.210 to 290.340 has occurred and a penalty may be due, the department shall
45 notify the employer of such finding by providing a notice of penalty to the
46 employer. Such penalty shall not be due until forty-five days after the date of the
47 notice of the penalty.

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

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

68 such penalty amount.

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

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

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

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

25 [(1) The total number of hours worked that are not paid pursuant to a
26 collective bargaining agreement for the time period in that occupational title in
27 the locality and the total number of hours worked that are paid pursuant to a
28 collective bargaining agreement for the time period in that occupational title in
29 the locality shall be considered;

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

34 that is not paid pursuant to a collective bargaining agreement as measured by the
35 number of **reportable** hours worked at such rate for that occupational title
36 within the locality;

37 [(3)] **(b)** If the total number of **reportable** hours that are paid pursuant
38 to a collective bargaining agreement, in the aggregate, exceeds the total number
39 of **reportable** hours that are not paid pursuant to such an agreement, in the
40 aggregate, then the prevailing wage rate shall be the rate most commonly paid
41 that is paid pursuant to a collective bargaining agreement as measured by the
42 number of **reportable** hours worked at such rate for that occupational title
43 within the locality;

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

47 (a) If wages were reported for an occupational title within a locality
48 within the previous six annual wage order reporting periods and the prevailing
49 wage rate was determined by a collective bargaining agreement by hours worked
50 pursuant to such agreement in the most recent annual wage order reporting
51 period where such wages were reported, then the wage rate paid pursuant to the
52 current collective bargaining agreement shall be the prevailing rate for that
53 occupational title within the locality;

54 (b) If wages were reported for an occupational title within a locality
55 within the previous six annual wage order reporting periods and the prevailing
56 wage rate was not determined by hours worked pursuant to a collective
57 bargaining agreement in the most recent annual wage order reporting period
58 where such wages were reported, then the wage rate paid in the most recent
59 annual wage order reporting period when such wages were reported shall be the
60 prevailing wage rate for that occupational title within the locality;

61 (c) If no wages were reported for an occupational title within a locality
62 within the previous six annual wage order reporting periods, the department
63 shall examine hours and wages reported in all adjacent Missouri counties during
64 the same periods. The most recent reported wage rate in a given wage order
65 period in the adjacent Missouri county with the most reported hours actually
66 worked for that occupational title in the wage period during the previous six
67 annual wage order reporting periods shall be used to determine the prevailing
68 wage rate;

69 (d) If no wages were reported for an occupational title within any adjacent

70 Missouri county within the previous six annual wage order reporting periods,
71 then the rate paid pursuant to the current collective bargaining agreement shall
72 be the prevailing wage rate for that occupational title within the locality.]

73 **(c) If the total number of reportable hours that are paid**
74 **pursuant to a collective bargaining agreement and the total number of**
75 **reportable hours that are not paid pursuant to a collective bargaining**
76 **agreement do not equal or exceed, in the aggregate, three hundred**
77 **hours for an occupational title within a locality there shall be no**
78 **prevailing wage rate for that wage order;**

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

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

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

93 6. After the receipt of the objection, the department shall set a date for
94 a hearing on the objection. The date for the hearing shall be within sixty days
95 of the receipt of the objection. Written notice of the time and place of the hearing
96 shall be given to the objectors at least ten days prior to the date set for the
97 hearing.

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

105 8. Within twenty days of the conclusion of the hearing, the department

106 shall rule on the written objection and make the final determination that it
107 believes the evidence warrants. Immediately, the department shall file a certified
108 copy of its final determination with the secretary of state and with the
109 department and shall serve a copy of the final determination on all parties to the
110 proceedings by personal service or by registered mail.

111 9. This final decision of the department of the prevailing **hourly rate of**
112 wages in the locality for each occupational title is subject to review in accordance
113 with the provisions of chapter 536. Any person affected, whether or not the
114 person participated in the proceedings resulting in the final determination, may
115 have the decision of the department reviewed. The filing of the final
116 determination with the secretary of state shall be considered a service of the final
117 determination on persons not participating in the administrative proceedings
118 resulting in the final determination.

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

122 11. Any annual wage order made for a particular occupational title in a
123 locality, that is based on the number of hours worked under a collective
124 bargaining agreement, may be altered once each year, as provided in this
125 subsection. The prevailing wage for each such occupational title may be adjusted
126 on the anniversary date of any collective bargaining agreement which covers all
127 persons in that particular occupational title in the locality in accordance with any
128 annual incremental wage increases set in the collective bargaining agreement. If
129 the prevailing wage for an occupational title is adjusted pursuant to this
130 subsection, the employee's representative or employer in regard to such collective
131 bargaining agreement shall notify the department of this adjustment, including
132 the effective date of the adjustment. The adjusted prevailing wage shall be in
133 effect until the next final annual wage order is issued pursuant to this
134 section. The wage rates for any particular job, contracted and commenced within
135 sixty days of the contract date, which were set as a result of the annual or revised
136 wage order, shall remain in effect for the duration of that particular job.

137 12. In addition to all other reporting requirements of sections 290.210 to
138 290.340, each public body which is awarding a contract for a public works project
139 shall, prior to beginning of any work on such public works project, notify the
140 department, on a form prescribed by the department, of the scope of the work to
141 be done, the various types of craftsmen who will be needed on the project, and the

142 date work will commence on the project.

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

✓
Bill

Copy