

FIRST REGULAR SESSION

HOUSE BILL NO. 576

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HUNTER, RUESTMAN, WILSON (130), BEAN, GUEST, MORRIS, STEVENSON, HOBBS, JETTON (Co-sponsors), RICHARD, KING, DAVIS (19), KELLY (144), THRELKELD, MOORE, ENGLER, GOODMAN, SCHLOTTACH, CUNNINGHAM (86), JOHNSON (47), BIVINS, MAYER, LUETKEMEYER, ANGST AND PURGASON.

Read 1st time February 27, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1455L.02I

AN ACT

To repeal sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, and to enact in lieu thereof eight new sections relating to the prevailing wage.

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

Section A. Sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.290, and 290.340, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, 290.290, and 290.340, to read as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,

the following terms mean:

(1) "Construction" [includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair.], **for-profit activities done by laborers, workers or mechanics on public works involving the carrying out of any building, clearing, filling, excavation, or substantial enlargement or improvement in the size or use of any structure or the appearance of any land, but not including decorating, maintenance, replacement, or repairs. When appropriate to the context, "construction" refers to the act of construction or the result of construction;**

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

(3) "Interested party", **any agent or officer of the contracting public body or any**

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

12 **employee of a contractor or subcontractor subject to the public works contract;**

13 (4) "Locality" [means], the county where the physical work upon public works is
14 performed, except that [if there is not available in the county a sufficient number of competent
15 skilled workmen to construct the public works efficiently and properly, "locality" may include
16 two or more counties adjacent to the one in which the work or construction is to be performed
17 and from which such workers may be obtained in sufficient numbers to perform the work, and
18 that,] with respect to contracts with the state highways and transportation commission, "locality"
19 may be construed to include two or more adjacent counties from which workmen may be
20 accessible for work on such construction[.];

21 [(4)] (5) "Maintenance work" [means], the repair[, but not the] **or** replacement, of
22 existing facilities **components** when the size, type or [extent] **intended use** of the existing
23 facilities is not thereby changed or increased[.];

24 [(5)] (6) "Prevailing hourly rate of wages" [means], the **average** wages paid generally,
25 in the locality in which the public works is being performed, to workmen engaged in work of a
26 similar character including the basic hourly rate of pay and the amount of the rate of
27 contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person
28 pursuant to a fund, plan or program, and the amount of the rate of costs to the contractor or
29 subcontractor which may be reasonably anticipated in providing benefits to workmen and
30 mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or
31 program which was communicated in writing to the workmen affected, for medical or hospital
32 care, pensions on retirement or death, compensation for injuries or illness resulting from
33 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits,
34 life insurance, disability and sickness insurance, accident insurance, for vacation and holiday pay,
35 for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe
36 benefits, but only where the contractor or subcontractor is not required by other federal or state
37 law to provide any of the benefits; provided, that the obligation of a contractor or subcontractor
38 to make payment in accordance with the prevailing wage determinations of the department,
39 insofar as sections 290.210 to 290.340 are concerned, may be discharged by the making of
40 payments in cash, by the making of irrevocable contributions to trustees or third persons as
41 provided herein, by the assumption of an enforceable commitment to bear the costs of a plan or
42 program as provided herein, or any combination thereof, where the aggregate of such payments,
43 contributions and costs is not less than the rate of pay plus the other amounts as provided
44 herein[.];

45 [(6)] (7) "Public body" [means], the state of Missouri or any officer, official, authority,
46 board or commission of the state, or other political subdivision thereof, or any institution
47 supported in whole or in part by public funds[.];

48 [(7)] (8) "Public works" [means], all fixed works constructed for public use or benefit
49 [or] **and directly** paid for wholly or in part out of public funds. It also includes any work done
50 directly by any public utility company when performed by it pursuant to the order of the public
51 service commission or other public authority whether or not it be done under public supervision
52 or direction or paid for wholly or in part out of public funds when let to contract by said utility.
53 It does not include any work done for or by any drainage or levee district[.] **or any project with**
54 **a total cost of less than one hundred fifty thousand dollars;**

55 [(8)] (9) "Workmen" [means], laborers, workmen and mechanics.

 290.220. It is hereby declared to be the policy of the state of Missouri that a wage of no
2 less than the prevailing hourly rate of wages for work of a similar character in the locality in
3 which the work is performed shall be paid to all workmen employed by or on behalf of any
4 public body engaged in public works [exclusive of], **but not including maintenance work or**
5 **repairs, or work done pursuant to section 290.260.**

 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 **actual** construction of public works, [exclusive of]
5 **but not including maintenance work or repairs, work done pursuant to section 290.260.**
6 Only such 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 to be employed
8 upon public works.

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

 290.250. Every public body authorized to contract for or construct public works, before
2 advertising for bids or undertaking such construction shall request the department to determine
3 the prevailing rates of wages for workmen for the class or type of work called for by the public
4 works, in the locality where the work is to be performed. The department shall determine the
5 prevailing hourly rate of wages in the locality in which the work is to be performed for each type
6 of workman required to execute the contemplated contract and such determination or schedule
7 of the prevailing hourly rate of wages **by occupational title as claimed by each union which**
8 **shall be attached to and made a part of the specifications for the work. Where no wages are**
9 **reported for a particular locality the hourly wage rate shall be one and one-half times the**
10 **most recent average hourly wage rate for the locality as published on or before March**
11 **tenth of each year by the Missouri economic research and information center, Missouri**
12 **department of economic development or its successor.** The public body shall then specify in

13 the resolution or ordinance and in the call for bids for the contract, what is the prevailing hourly
14 rate of wages in the locality for each type of workman needed to execute the contract and also
15 the general prevailing rate for legal holiday and overtime work, **and shall include such rates**
16 **in the advertising of such bids.** It shall be mandatory upon the contractor to whom the contract
17 is awarded and upon any subcontractor under him **or her**, to pay not less than the specified rates
18 to all workmen employed by them in the execution of the contract. The public body awarding
19 the contract shall cause to be inserted in the contract a stipulation to the effect that not less than
20 the prevailing hourly rate of wages shall be paid to all workmen performing work under the
21 contract. It shall also require in all contractor's bonds that the contractor include such provisions
22 as will guarantee the faithful performance of the prevailing hourly wage clause as provided by
23 contract. The contractor shall forfeit as a penalty to the state, county, city and county, city, town,
24 district or other political subdivision on whose behalf the contract is made or awarded ten dollars
25 for each workman employed, for each calendar day, or portion thereof, such workman is paid less
26 than the said stipulated rates for any work done under said contract, by him **or her** or by any
27 subcontractor under him **or her**, and the said public body awarding the contract shall cause to
28 be inserted in the contract a stipulation to this effect. **An interested party may report an**
29 **alleged violation of the provisions of sections 290.210 to 290.340 to the contracting public**
30 **body, and** it shall be the duty of such public body awarding the contract, and its agents and
31 officers, to take cognizance of all complaints of [all violations] **any violation** of the provisions
32 of sections 290.210 to 290.340 committed in the course of the execution of the contract[,] and,
33 **to report the alleged violation to the department, which shall investigate the complaint and**
34 **either confirm the violation or dismiss the complaint. Upon confirmation of a violation by**
35 **the department, the contracting public body,** when making payments to the contractor
36 becoming due under said contract, [to] **shall** withhold and retain therefrom [all] **only such** sums
37 and amounts due and owing as a result of any **confirmed** violation of sections 290.210 to
38 290.340. It shall be lawful for any contractor to withhold from any subcontractor under him **or**
39 **her** sufficient sums to cover any penalties withheld from him **or her** by the awarding body on
40 account of said subcontractor's failure to comply with the terms of sections 290.210 to 290.340,
41 and if payment has already been made to him **or her**, the contractor may recover from him **or**
42 **her** the amount of the penalty in a suit at 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 prevailing rates, the
6 department shall ascertain and consider the applicable wage rates established by collective

7 bargaining agreements, if any, and the **average** rates that are paid generally within the locality.

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

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

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

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

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

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

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

39 9. All proceedings in any court affecting a determination of the department under the
40 provisions of sections 290.210 to 290.340 shall have priority in hearing and determination over
41 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 prevailing rates, the department shall ascertain [and consider the applicable wage
7 rates established by collective bargaining agreements, if any, and] the rates that are paid generally
8 within the locality, and shall, by March tenth of each year, make an initial determination for each
9 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 **or she** deems objectionable by filing
16 a written notice with the department, stating the specific grounds of the objection. If no
17 objection 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 **affected**, thereafter may introduce any
27 evidence 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, RSMo.
35 Any person affected, whether or not the person participated in the proceedings resulting in the
36 final 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, RSMo, and be made
42 a party 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 in
54 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 **or**
12 **she** had fully complied with the provisions and requirements of this chapter, and no public body
13 shall be authorized to make final payment until such affidavit is filed therewith in proper form
14 and order.

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

28 4. The provisions of subsection 3 of this section shall not apply to construction of public
29 works for which the contract awarded is in the amount of two hundred fifty thousand dollars or
30 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
3 provisions and requirements of sections 290.210 to 290.340 shall be punished for each violation
4 thereof by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six
5 months, or by both such fine and imprisonment. Each day such **willful** violation [or omission]
6 continues shall constitute a separate offense as contemplated by this section.