

FIRST REGULAR SESSION

HOUSE BILL NO. 1041

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SWAN (Sponsor), HICKS, FUNDERBURK, LICHTENEGGER,
LANT, WALKER AND RICHARDSON (Co-sponsors).

2106H.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Sections 290.210, 290.260, and 290.262, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 290.210, 290.253, 290.260, 290.262, and 290.285, to read as follows:

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

(1) **“Collective bargaining agreement” includes any written agreement or understanding between an employer or employer association and a labor organization or union which is the exclusive bargaining representative of the employer’s or employer association’s employees pursuant to the terms of the National Labor Relations Act and is either currently a member of the Missouri state building and construction trades council or has been a member and affiliate of the Missouri state building and construction trades council at any time since January 1, 1999.**

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

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

[(3)] (4) **“Labor organization” or “Union” means any entity which has been designated pursuant to the terms of the National Labor Relations Act as the exclusive bargaining representative of employees of employers engaged primarily in the construction industry, which entity either is currently a member of the Missouri state building and**

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 **construction trades council or has been a member of the Missouri state building and**
17 **construction trades council at any time since January 1, 1999.**

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

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

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

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

52 [(7)] (9) "Public works" means all fixed works constructed for public use or benefit or
53 paid for wholly or in part out of public funds. It also includes any work done directly by any
54 public utility company when performed by it pursuant to the order of the public service
55 commission or other public authority whether or not it be done under public supervision or
56 direction or paid for wholly or in part out of public funds when let to contract by said utility. It
57 does not include any work done for or by any drainage or levee district.

58 [(8)] (10) "Workmen" means laborers, workmen and mechanics.

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

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

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

290.260. 1. The department, as it deems necessary, shall from time to time investigate
2 and determine the prevailing hourly rate of wages in the localities. **In doing so, the department
3 shall accept and consider information regarding local wage rates that is submitted in either
4 paper or electronic format.** A determination applicable to every locality to be contained in a
5 general wage order shall be made annually on or before July first of each year for the Missouri
6 state highways and transportation commission and shall remain in effect until superseded by a
7 new general wage order. [In determining prevailing rates, the department shall ascertain and
8 consider the applicable wage rates] **The prevailing rate for an occupational title in a locality,
9 with the exception of third and fourth class counties, shall be the wage rate most commonly
10 paid, as measured by the number of hours worked at each wage rate, for that occupational
11 title within the locality.**

12 **2. With respect only to third and fourth class counties, the prevailing rate for an
13 occupational title within a locality shall be determined in the following manner:**

14 **(1) The total number of non-union hours worked for the time period in that**
15 **occupational title in the locality shall be considered;**

16 **(2) The total number of union hours worked for the time period in that**
17 **occupational title in the locality shall be considered;**

18 **(3) If the total number of non-union hours in the aggregate exceeds the total**
19 **number of union hours in the aggregate, then a non-union rate shall prevail. If the total**
20 **number of union hours in the aggregate exceeds the total number of non-union hours in**
21 **the aggregate, then a union rate shall prevail; and**

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

28 **If no work within a particular occupational title has been performed in the locality at any**
29 **wage rate, the prevailing rate for that occupational title in that locality shall be the wage**
30 **rate most commonly paid, as measured by the number of hours worked at each wage rate,**
31 **for that occupational title within all Missouri counties adjacent to the locality. For the**
32 **purposes of this section, “adjacent county” means any Missouri county having a boundary**
33 **that, at any point, touches any boundary of the locality for which the wage rate is being**
34 **determined. If no work within a particular occupational title has been performed in the**
35 **locality and its adjacent counties, the prevailing rate for that occupational title in that**
36 **locality shall be the rate established by the collective bargaining [agreements, if any, and the**
37 **rates that are paid generally within the locality] agreement, if any, covering that locality and**
38 **the work that falls within that occupational title.**

39 **[2.] 3.** A certified copy of the determination so made shall be filed immediately with the
40 secretary of state and with the department in Jefferson City. Copies shall be supplied by the
41 department to all persons requesting them within ten days after the filing.

42 **[3.] 4.** At any time within thirty days after the certified copies of the determinations have
43 been filed with the secretary of state and the department, any person who is affected thereby may
44 object in writing to the determination or the part thereof that he deems objectionable by filing
45 a written notice with the department, stating the specific grounds of the objection.

46 **[4.] 5.** Within thirty days of the receipt of the objection, the department shall set a date
47 for a hearing on the objection. The date for the hearing shall be within sixty days of the receipt
48 of the objection. Written notice of the time and place of the hearing shall be given to the
49 objectors at least ten days prior to the date set for the hearing.

50 [5.] 6. The department at its discretion may hear each written objection separately or
51 consolidate for hearing any two or more written objections. At the hearing the department shall
52 first introduce in evidence the investigation it instituted and the other facts which were
53 considered at the time of the original determination which formed the basis for its determination.
54 The department, or the objector, or any interested party, thereafter may introduce any evidence
55 that is material to the issues.

56 [6.] 7. Within twenty days of the conclusion of the hearing, the department must rule on
57 the written objection and make the final determination that it believes the evidence warrants.
58 Immediately, the department shall file a certified copy of its final determination with the
59 secretary of state and with the department and shall serve a copy of the final determination on
60 all parties to the proceedings by personal service or by registered mail.

61 [7.] 8. This final decision of the department of the prevailing wages in the locality is
62 subject to review in accordance with the provisions of chapter 536. Any person affected,
63 whether or not the person participated in the proceedings resulting in the final determination,
64 may have the decision of the department reviewed. The filing of the final determination with the
65 secretary of state shall be considered a service of the final determination on persons not
66 participating in the administrative proceedings resulting in the final determination.

67 [8.] 9. At any time before trial any person affected by the final determination of the
68 department may intervene in the proceedings to review under chapter 536 and be made a party
69 to the proceedings.

70 [9.] 10. All proceedings in any court affecting a determination of the department under
71 the provisions of sections 290.210 to 290.340 shall have priority in hearing and determination
72 over all other civil proceedings pending in the court, except election contests.

290.262. 1. Except as otherwise provided in section 290.260, the department shall
2 annually investigate and determine the prevailing hourly rate of wages in each locality for each
3 separate occupational title. **In doing so, the department shall accept and consider**
4 **information regarding local wage rates that is submitted in either paper or electronic**
5 **format.** A final determination applicable to every locality to be contained in an annual wage
6 order shall be made annually on or before July first of each year and shall remain in effect until
7 superseded by a new annual wage order or as otherwise provided in this section. [In determining
8 prevailing rates, the department shall ascertain and consider the applicable wage rates established
9 by collective bargaining agreements, if any, and the rates that are paid generally within the
10 locality and] **Except for third and fourth class counties which shall be calculated in**
11 **accordance with section 290.260, the prevailing rate for an occupational title in a locality**
12 **shall 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 the locality. With respect to all**

14 **counties in Missouri, if no work within a particular occupational title has been performed**
15 **during the reporting period in the locality at any wage rate, the prevailing rate for that**
16 **occupational title in that locality shall be the wage rate most commonly paid, as measured**
17 **by the number of hours worked at each wage rate, for that occupational title within all**
18 **Missouri counties adjacent to that locality. For the purposes of this section, “adjacent**
19 **county” means any Missouri county having a boundary that, at any point, touches any**
20 **boundary of the locality for which the wage rate is being determined. If no work within**
21 **a particular occupational title has been performed in the locality and its adjacent counties,**
22 **the prevailing rate for that occupational title in that locality shall be the rate which is the**
23 **last rate published as the prevailing wage rate within the locality. The department shall,**
24 by March tenth of each year, make an initial determination for each occupational title within the
25 locality.

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

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

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

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

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

49 7. This final decision of the department of the prevailing wages in the locality for each
50 occupational title is subject to review in accordance with the provisions of chapter 536. Any
51 person affected, whether or not the person participated in the proceedings resulting in the final
52 determination, may have the decision of the department reviewed. The filing of the final
53 determination with the secretary of state shall be considered a service of the final determination
54 on persons not participating in the administrative proceedings resulting in the final
55 determination.

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

59 9. Any annual wage order made for a particular occupational title in a locality may be
60 altered once each year, as provided in this subsection. The prevailing wage for each such
61 occupational title may be adjusted on the anniversary date of any collective bargaining agreement
62 which covers all persons in that particular occupational title in the locality in accordance with
63 any annual incremental wage increases set in the collective bargaining agreement. If the
64 prevailing wage for an occupational title is adjusted pursuant to this subsection, the employee's
65 representative or employer in regard to such collective bargaining agreement shall notify the
66 department of this adjustment, including the effective date of the adjustment. The adjusted
67 prevailing wage shall be in effect until the next final annual wage order is issued pursuant to this
68 section. The wage rates for any particular job, contracted and commenced within sixty days of
69 the contract date, which were set as a result of the annual or revised wage order, shall remain in
70 effect for the duration of that particular job.

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

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

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