

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 409

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LOVE (Sponsor) AND REMOLE (Co-sponsor).

1091H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.210 and 290.262, RSMo, and to enact in lieu thereof two 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Section A. Sections 290.210 and 290.262, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 290.210 and 290.262, to read as follows:

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

2 (1) "Construction" includes construction, reconstruction, [improvement,] enlargement,
3 [alteration,] **and painting and decorating done as part of any of the foregoing**, or major
4 repair]. **Construction does not include maintenance work.**

5 (2) "Department" means the department of labor and industrial relations.

6 (3) "Locality" means the county where the physical work upon public works is
7 performed, except that if there is not available in the county a sufficient number of competent
8 skilled workmen to construct the public works efficiently and properly, "locality" may include
9 two or more counties adjacent to the one in which the work or construction is to be performed
10 and from which such workers may be obtained in sufficient numbers to perform the work, and
11 that, with respect to contracts with the state highways and transportation commission, "locality"
12 may be construed to include two or more adjacent counties from which workmen may be
13 accessible for work on such construction.

14 (4) "Maintenance work" means the repair, but not the replacement, of existing facilities
15 **and shall include repairs that restore existing facilities to a previous state or condition or**

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 **improve the utility or enhance the appearance of existing facilities provided** that [when] the
17 size, type or extent of the existing facilities is not thereby changed or increased. **Maintenance**
18 **work shall not include major repairs which shall be defined as any work that exceeds the**
19 **replacement cost of existing facilities.**

20 (5) "Prevailing hourly rate of wages" means the wages paid generally, in the locality in
21 which the public works is being performed[, to workmen engaged in work of a similar character
22 including the basic hourly rate of pay and the amount of the rate of contributions irrevocably
23 made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan
24 or program, and the amount of the rate of costs to the contractor or subcontractor which may be
25 reasonably anticipated in providing benefits to workmen and mechanics pursuant to an
26 enforceable commitment to carry out a financially responsible plan or program which was
27 communicated in writing to the workmen affected, for medical or hospital care, pensions on
28 retirement or death, compensation for injuries or illness resulting from occupational activity, or
29 insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability
30 and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of
31 apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where
32 the contractor or subcontractor is not required by other federal or state law to provide any of the
33 benefits; provided, that the obligation of a contractor or subcontractor to make payment in
34 accordance with the prevailing wage determinations of the department, insofar as sections
35 290.210 to 290.340 are concerned, may be discharged by the making of payments in cash, by the
36 making of irrevocable contributions to trustees or third persons as provided herein, by the
37 assumption of an enforceable commitment to bear the costs of a plan or program as provided
38 herein, or any combination thereof, where the aggregate of such payments, contributions and
39 costs is not less than the rate of pay plus the other amounts as provided herein]. **The prevailing**
40 **hourly rate of wages for all counties except for any county of the first classification with**
41 **more than one hundred one thousand but fewer than one hundred fifteen thousand**
42 **inhabitants, any county with a charter form of government and with more than two**
43 **hundred thousand but fewer than three hundred fifty thousand inhabitants, any county**
44 **of the second classification with more than fifty thousand but fewer than fifty-eight**
45 **thousand inhabitants, any county with a charter form of government and with more than**
46 **three hundred thousand but fewer than four hundred fifty thousand inhabitants, any**
47 **county with a charter form of government and with more than nine hundred fifty thousand**
48 **inhabitants, any county of the third classification without a township form of government**
49 **and with more than twenty-nine thousand but fewer than thirty-three thousand**
50 **inhabitants and with a city of the fourth classification with more than seven thousand but**
51 **fewer than eight thousand inhabitants as the county seat, any county of the first**

52 **classification with more than ninety-two thousand but fewer than one hundred one**
53 **thousand inhabitants, any county of the first classification with more than two hundred**
54 **thousand but fewer than two hundred sixty thousand inhabitants, any county with a**
55 **charter form of government and with more than six hundred thousand but fewer than**
56 **seven hundred thousand inhabitants, and any city not within a county, shall be the state**
57 **average weekly wage as determined by the department of labor and industrial relations.**

58 (6) "Public body" means the state of Missouri or any officer, official, authority, board
59 or commission of the state, or other political subdivision thereof, or any institution supported in
60 whole or in part by public funds.

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

67 (8) "Workmen" means laborers, workmen and mechanics.

290.262. 1. **(1)(a)** Except as otherwise provided in section 290.260, **for any county of**
2 **the first classification with more than one hundred one thousand but fewer than one**
3 **hundred fifteen thousand inhabitants, any county with a charter form of government and**
4 **with more than two hundred thousand but fewer than three hundred fifty thousand**
5 **inhabitants, any county of the second classification with more than fifty thousand but**
6 **fewer than fifty-eight thousand inhabitants, any county with a charter form of government**
7 **and with more than three hundred thousand but fewer than four hundred fifty thousand**
8 **inhabitants, any county with a charter form of government and with more than nine**
9 **hundred fifty thousand inhabitants, any county of the third classification without a**
10 **township form of government and with more than twenty-nine thousand but fewer than**
11 **thirty-three thousand inhabitants and with a city of the fourth classification with more**
12 **than seven thousand but fewer than eight thousand inhabitants as the county seat, any**
13 **county of the first classification with more than ninety-two thousand but fewer than one**
14 **hundred one thousand inhabitants, any county of the first classification with more than**
15 **two hundred thousand but fewer than two hundred sixty thousand inhabitants, any county**
16 **with a charter form of government and with more than six hundred thousand but fewer**
17 **than seven hundred thousand inhabitants, and any city not within a county, the department**
18 **shall annually investigate and determine the prevailing hourly rate of wages in each locality for**
19 **each separate occupational title.**

20 (b) A final determination applicable to every locality to be contained in an annual wage
21 order shall be made annually on or before July first of each year and shall remain in effect until
22 superseded by a new annual wage order or as otherwise provided in this section.

23 (c) In determining prevailing rates, **for any county of the first classification with more**
24 **than one hundred one thousand but fewer than one hundred fifteen thousand inhabitants,**
25 **any county with a charter form of government and with more than two hundred thousand**
26 **but fewer than three hundred fifty thousand inhabitants, any county of the second**
27 **classification with more than fifty thousand but fewer than fifty-eight thousand**
28 **inhabitants, any county with a charter form of government and with more than three**
29 **hundred thousand but fewer than four hundred fifty thousand inhabitants, any county**
30 **with a charter form of government and with more than nine hundred fifty thousand**
31 **inhabitants, any county of the third classification without a township form of government**
32 **and with more than twenty-nine thousand but fewer than thirty-three thousand**
33 **inhabitants and with a city of the fourth classification with more than seven thousand but**
34 **fewer than eight thousand inhabitants as the county seat, any county of the first**
35 **classification with more than ninety-two thousand but fewer than one hundred one**
36 **thousand inhabitants, any county of the first classification with more than two hundred**
37 **thousand but fewer than two hundred sixty thousand inhabitants, any county with a**
38 **charter form of government and with more than six hundred thousand but fewer than**
39 **seven hundred thousand inhabitants, and any city not within a county, the department shall**
40 ascertain and consider the applicable wage rates established by collective bargaining agreements,
41 if any, **the applicable wage rates paid by members of a trade organization designated with**
42 **a 501(c)(6) tax exempt status by the United States Internal Revenue Service, and the rates**
43 that are paid generally within [the locality] **any county of the first classification with more**
44 **than one hundred one thousand but fewer than one hundred fifteen thousand inhabitants,**
45 **any county with a charter form of government and with more than two hundred thousand**
46 **but fewer than three hundred fifty thousand inhabitants, any county of the second**
47 **classification with more than fifty thousand but fewer than fifty-eight thousand**
48 **inhabitants, any county with a charter form of government and with more than three**
49 **hundred thousand but fewer than four hundred fifty thousand inhabitants, any county**
50 **with a charter form of government and with more than nine hundred fifty thousand**
51 **inhabitants, any county of the third classification without a township form of government**
52 **and with more than twenty-nine thousand but fewer than thirty-three thousand**
53 **inhabitants and with a city of the fourth classification with more than seven thousand but**
54 **fewer than eight thousand inhabitants as the county seat, any county of the first**
55 **classification with more than ninety-two thousand but fewer than one hundred one**

56 **thousand inhabitants, any county of the first classification with more than two hundred**
57 **thousand but fewer than two hundred sixty thousand inhabitants, any county with a**
58 **charter form of government and with more than six hundred thousand but fewer than**
59 **seven hundred thousand inhabitants, and any city not within a county, and shall, by March**
60 **tenth of each year, make an initial determination for each occupational title within the locality[.]**
61 **;**

62 **(d) For the purposes of this chapter, the wage rates paid by members of a trade**
63 **organization may be submitted by such trade organization and shall be considered in the**
64 **aggregate. Any subsequent challenge to the wage rate as determined by the department**
65 **based upon such data shall not require any member of such trade organization to appear**
66 **or participate in any administrative action related thereto;**

67 **(2) (a) Except as otherwise provided in section 290.260, the prevailing hourly rate**
68 **of wages for all other counties shall be the state average weekly wage as determined by the**
69 **department of labor and industrial relations;**

70 **(b) A final determination applicable to every locality to be contained in an annual**
71 **wage order shall be made annually on or before July first of each year and shall remain**
72 **in effect until superseded by a new annual wage order or as otherwise provided in this**
73 **section;**

74 **(c) In determining prevailing rates, the department shall consider the applicable**
75 **wage rates that are paid generally within the locality, and shall, by March tenth of each**
76 **year, make an initial determination for each occupational title within the locality;**

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

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

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

89 5. The department at its discretion may hear each written objection separately or
90 consolidate for hearing any two or more written objections. At the hearing the department shall
91 first introduce in evidence the investigation it instituted and the other facts which were

92 considered at the time of the original determination which formed the basis for its determination.
93 The department, or the objector, or any interested party, thereafter may introduce any evidence
94 that is material to the issues.

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

100 7. This final decision of the department of the prevailing wages in the locality for each
101 occupational title is subject to review in accordance with the provisions of chapter 536. Any
102 person affected, whether or not the person participated in the proceedings resulting in the final
103 determination, may have the decision of the department reviewed. The filing of the final
104 determination with the secretary of state shall be considered a service of the final determination
105 on persons not participating in the administrative proceedings resulting in the final
106 determination.

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

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

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

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