FIRST REGULAR SESSION

HOUSE BILL NO. 195

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LOVE.

0833H.01I 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Section A. Sections 290.210 and 290.262, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 290.210 and 290.262, to read as follows: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**, the following terms mean**:

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

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

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

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

[(5) "Labor organization" or "union" means any entity which has been designated pursuant to the terms of the National Labor Relations Act as the exclusive bargaining

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

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

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

[(7)**] (4)** "Maintenance work" **[**means**] ,** the repair, but not the replacement, of existing facilities **and shall include repairs that restore existing facilities to a previous state or condition or improve the utility or enhance the appearance of existing facilities provided that [**when**]** the size, type or extent of the existing facilities is not thereby changed or increased**. Maintenance work shall not include major repairs which shall be defined as any work that exceeds the replacement cost of existing facilities**;

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

of wages for all counties except for any county of the first classification with more than one hundred one thousand but fewer than one hundred fifteen thousand inhabitants, any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants, any county of the second classification with more than fifty thousand but fewer than fifty-eight thousand inhabitants, any county with a charter form of government and with more than three hundred thousand but fewer than four hundred fifty thousand inhabitants, any county with a charter form of government and with more than nine hundred fifty thousand inhabitants, any county of the third classification without a township form of government and with more than twenty-nine thousand but fewer than thirty-three thousand inhabitants and with a city of the fourth classification with more than seven thousand but fewer than eight thousand inhabitants as the county seat, any county of the first classification with more than ninety-two thousand but fewer than one hundred one thousand inhabitants, any county of the first classification with more than two hundred thousand but fewer than two hundred sixty thousand inhabitants, any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, and any city not within a county shall be deemed:

(a) The median hourly wage estimate for the construction and extraction occupational code most closely resembling the occupational title as published in the latest United States Bureau of Labor Statistics by Metropolitan and Non-Metropolitan Area Occupational Employment Wage Estimate; or

(b) If no such rate can be determined under paragraph (a) of this subdivision, the median hourly wage estimate for occupational code 47-0000 in the construction and extraction occupational code, published in the latest United States Bureau of Labor Statistics publication shall be the prevailing wage for such occupational title;

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

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

[(11)**] (7)** "Public works" **[**means**] ,** all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. It also includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or

89 direction or paid for wholly or in part out of public funds when let to contract by said utility. It
90 does not include any work done for or by any drainage or levee district;
91 **[**(12)**] (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 determine the prevailing hourly rate of wages in each locality for each separate
19 occupational title. **[**In doing so, the department shall accept and consider information regarding
20 local wage rates that is submitted in either paper or electronic formats.**]**
21 **(b)** A final determination applicable to every locality to be contained in an annual wage
22 order shall be made annually on or before July first of each year and shall remain in effect until
23 superseded by a new annual wage order or as otherwise provided in this section.
24 **(c) In determining prevailing rates, for any county of the first classification with**
25 **more than one hundred one thousand but fewer than one hundred fifteen thousand**
26 **inhabitants, any county with a charter form of government and with more than two**
27 **hundred thousand but fewer than three hundred fifty thousand inhabitants, any county**
28 **of the second classification with more than fifty thousand but fewer than fifty-eight**
29 **thousand inhabitants, any county with a charter form of government and with more than**
30 **three hundred thousand but fewer than four hundred fifty thousand inhabitants, any**
31 **county with a charter form of government and with more than nine hundred fifty thousand**
32 **inhabitants, any county of the third classification without a township form of government**
33 **and with more than twenty-nine thousand but fewer than thirty-three thousand**

inhabitants and with a city of the fourth classification with more than seven thousand but fewer than eight thousand inhabitants as the county seat, any county of the first classification with more than ninety-two thousand but fewer than one hundred one thousand inhabitants, any county of the first classification with more than two hundred thousand but fewer than two hundred sixty thousand inhabitants, any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, and any city not within a county, the department shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, the applicable wage rates paid by members of a trade organization designated with a 501(c)(6) tax exempt status by the United States Internal Revenue Service, and the rates that are paid generally within any county of the first classification with more than one hundred one thousand but fewer than one hundred fifteen thousand inhabitants, any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants, any county of the second classification with more than fifty thousand but fewer than fifty-eight thousand inhabitants, any county with a charter form of government and with more than three hundred thousand but fewer than four hundred fifty thousand inhabitants, any county with a charter form of government and with more than nine hundred fifty thousand inhabitants, any county of the third classification without a township form of government and with more than twenty-nine thousand but fewer than thirty-three thousand inhabitants and with a city of the fourth classification with more than seven thousand but fewer than eight thousand inhabitants as the county seat, any county of the first classification with more than ninety-two thousand but fewer than one hundred one thousand inhabitants, any county of the first classification with more than two hundred thousand but fewer than two hundred sixty thousand inhabitants, any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, and any city not within a county, and shall, by March tenth of each year, make an initial determination for each occupational title within the locality**[.] ;**

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

(2) (a) Except as otherwise provided in section 290.260, the prevailing hourly rate of wages for all other counties shall be deemed:

a. The median hourly wage estimate for the construction and extraction occupational code most closely resembling the occupational title as published in the latest United States Bureau of Labor Statistics by Metropolitan and Non-Metropolitan Area Occupational Employment Wage Estimate; or

b. If no such rate can be determined under subparagraph a of paragraph (a) of subdivision (2) of this subsection, the median hourly wage estimate for occupational code 47-0000 in the construction and extraction occupational code published in the latest United States Bureau of Labor Statistics publication shall be the prevailing wage for such occupational title;

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

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

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

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

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

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

106 (3) If the total number of hours that are paid pursuant to a collective bargaining
107 agreement, in the aggregate, exceeds the total number of hours that are not paid pursuant to such
108 an agreement, in the aggregate, then the prevailing wage rate shall be the rate most commonly
109 paid that is paid pursuant to a collective bargaining agreement as measured by the number of
110 hours worked at such rate for that occupational title within the locality;
111 (4) If no work within a particular occupational title has been performed in a locality at
112 any wage rate, the prevailing wage rate for that occupational title in that locality shall be
113 determined in the following manner:
114 (a) If wages were reported for an occupational title within a locality within the previous
115 six annual wage order reporting periods and the prevailing wage rate was determined by a
116 collective bargaining agreement by hours worked pursuant to such agreement in the most recent
117 annual wage order reporting period where such wages were reported, then the wage rate paid
118 pursuant to the current collective bargaining agreement shall be the prevailing rate for that
119 occupational title within the locality;
120 (b) If wages were reported for an occupational title within a locality within the previous
121 six annual wage order reporting periods and the prevailing wage rate was not determined by
122 hours worked pursuant to a collective bargaining agreement in the most recent annual wage order
123 reporting period where such wages were reported, then the wage rate paid in the most recent
124 annual wage order reporting period when such wages were reported shall be the prevailing wage
125 rate for that occupational title within the locality;
126 (c) If no wages were reported for an occupational title within a locality within the
127 previous six annual wage order reporting periods, the department shall examine hours and wages
128 reported in all adjacent Missouri counties during the same periods. The most recent reported
129 wage rate in a given wage order period in the adjacent Missouri county with the most reported
130 hours actually worked for that occupational title in the wage period during the previous six
131 annual wage order reporting periods shall be used to determine the prevailing wage rate;
132 (d) If no wages were reported for an occupational title within any adjacent Missouri
133 county within the previous six annual wage order reporting periods, then the rate paid pursuant
134 to the current collective bargaining agreement shall be the prevailing wage rate for that
135 occupational title within the locality.
136 4.**]** A certified copy of the initial determinations so made shall be filed immediately with
137 the secretary of state and with the department in Jefferson City. Copies shall be supplied by the
138 department to all persons requesting them within ten days after the filing.
139 **[**5.**] 3.** At any time within thirty days after the certified copies of the determinations have
140 been filed with the secretary of state and the department, any person who is affected thereby may
141 object in writing to a determination or a part thereof that he deems objectionable by filing a

142 written notice with the department, stating the specific grounds of the objection. If no objection
143 is filed, the determination is final after thirty days.
144 **[**6.**] 4.** After the receipt of the objection, the department shall set a date for a hearing on
145 the objection. The date for the hearing shall be within sixty days of the receipt of the objection.
146 Written notice of the time and place of the hearing shall be given to the objectors at least ten days
147 prior to the date set for the hearing.
148 **[**7.**] 5.** The department at its discretion may hear each written objection separately or
149 consolidate for hearing any two or more written objections. At the hearing the department shall
150 first introduce in evidence the investigation it instituted and the other facts which were
151 considered at the time of the original determination which formed the basis for its determination.
152 The department, or the objector, or any interested party, thereafter may introduce any evidence
153 that is material to the issues.
154 **[**8.**] 6.** Within twenty days of the conclusion of the hearing, the department shall rule on
155 the written objection and make the final determination that it believes the evidence warrants.
156 Immediately, the department shall file a certified copy of its final determination with the
157 secretary of state and with the department and shall serve a copy of the final determination on
158 all parties to the proceedings by personal service or by registered mail.
159 **[**9.**] 7.** This final decision of the department of the prevailing wages in the locality for
160 each occupational title is subject to review in accordance with the provisions of chapter 536.
161 Any person affected, whether or not the person participated in the proceedings resulting in the
162 final determination, may have the decision of the department reviewed. The filing of the final
163 determination with the secretary of state shall be considered a service of the final determination
164 on persons not participating in the administrative proceedings resulting in the final
165 determination.
166 **[**10.**] 8.** At any time before trial any person affected by the final determination of the
167 department may intervene in the proceedings to review under chapter 536 and be made a party
168 to the proceedings.
169 **[**11.**] 9.** Any annual wage order made for a particular occupational title in a locality, that
170 is based on the number of hours worked under a collective bargaining agreement, may be altered
171 once each year, as provided in this subsection. The prevailing wage for each such occupational
172 title may be adjusted on the anniversary date of any collective bargaining agreement which
173 covers all persons in that particular occupational title in the locality in accordance with any
174 annual incremental wage increases set in the collective bargaining agreement. If the prevailing
175 wage for an occupational title is adjusted pursuant to this subsection, the employee's
176 representative or employer in regard to such collective bargaining agreement shall notify the
177 department of this adjustment, including the effective date of the adjustment. The adjusted

178 prevailing wage shall be in effect until the next final annual wage order is issued pursuant to this
179 section. The wage rates for any particular job, contracted and commenced within sixty days of
180 the contract date, which were set as a result of the annual or revised wage order, shall remain in
181 effect for the duration of that particular job.

182 **[**12.**] 10.** In addition to all other reporting requirements of sections 290.210 to 290.340,
183 each public body which is awarding a contract for a public works project shall, prior to beginning
184 of any work on such public works project, notify the department, on a form prescribed by the
185 department, of the scope of the work to be done, the various types of craftsmen who will be
186 needed on the project, and the date work will commence on the project.

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