

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE NO. 2 FOR

HOUSE BILL NO. 34

97TH GENERAL ASSEMBLY

0372S.09T

2013

AN ACT

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

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

Section A. Sections 290.210, 290.260, and 290.262, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 290.210, 290.260, and 290.262, to read as
3 follows:

290.210. As used in sections 290.210 to 290.340, unless the context indicates otherwise:
2 (1) **"Adjacent county", any Missouri county of the third or fourth classification**
3 **having a boundary that, at any point, touches any boundary of the locality for which the**
4 **wage rate is being determined;**

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

11 (3) "Construction" includes construction, reconstruction, improvement, enlargement,
12 alteration, painting and decorating, or major repair[.] ;

13 [(2)] (4) "Department" means the department of labor and industrial relations[.] ;

14 (5) **"Labor organization" or "union" means any entity which has been designated**
15 **pursuant to the terms of the National Labor Relations Act as the exclusive bargaining**
16 **representative of employees of employers engaged in the construction industry, which**

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.

17 **entity or affiliated entity has ever had a collective bargaining agreement which determined**
18 **an occupational title wage rate;**

19 [(3)] (6) "Locality" means the county where the physical work upon public works is
20 performed[, except that if there is not available in the county a sufficient number of competent
21 skilled workmen to construct the public works efficiently and properly, "locality" may include
22 two or more counties adjacent to the one in which the work or construction is to be performed
23 and from which such workers may be obtained in sufficient numbers to perform the work, and
24 that, with respect to contracts with the state highways and transportation commission, "locality"
25 may be construed to include two or more adjacent counties from which workmen may be
26 accessible for work on such construction.] ;

27 [(4)] (7) "Maintenance work" means the repair, but not the replacement, of existing
28 facilities when the size, type or extent of the existing facilities is not thereby changed or
29 increased[.] ;

30 [(5)] (8) "Prevailing hourly rate of wages" means the wages paid generally, in the locality
31 in which the public works is being performed, to workmen engaged in work of a similar
32 character including the basic hourly rate of pay and the amount of the rate of contributions
33 irrevocably made [by a contractor or subcontractor to a trustee or to a third person pursuant] to
34 a fund, plan or program, and the amount of the rate of costs to the contractor or subcontractor
35 which may be reasonably anticipated in providing benefits to workmen and mechanics pursuant
36 to an enforceable commitment to carry out a financially responsible plan or program which was
37 communicated in writing to the workmen affected, for medical or hospital care, pensions on
38 retirement or death, compensation for injuries or illness resulting from occupational activity, or
39 insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability
40 and sickness insurance, accident insurance, for vacation and holiday pay, for defraying costs of
41 apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where
42 the contractor or subcontractor is not required by other federal or state law to provide any of the
43 benefits; provided, that the obligation of a contractor or subcontractor to make payment in
44 accordance with the prevailing wage determinations of the department, insofar as sections
45 290.210 to 290.340 are concerned, may be discharged by the making of payments in cash, by the
46 making of irrevocable contributions [to trustees or third persons as provided herein,] by the
47 assumption of an enforceable commitment to bear the costs of a plan or program as provided
48 herein, or any combination thereof, where the aggregate of such payments, contributions and
49 costs is not less than the rate of pay plus the other amounts as provided herein[.] ;

50 [(6)] (9) "**Previous six annual wage order reporting periods**" means the **current**
51 **annual wage order reporting period under consideration for wage rate determinations and**
52 **the five immediately preceding annual wage order reporting period;**

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

56 [(7)] (11) "Public works" means all fixed works constructed for public use or benefit or
57 paid for wholly or in part out of public funds. It also includes any work done directly by any
58 public utility company when performed by it pursuant to the order of the public service
59 commission or other public authority whether or not it be done under public supervision or
60 direction or paid for wholly or in part out of public funds when let to contract by said utility. It
61 does not include any work done for or by any drainage or levee district[.] ;

62 [(8)] (12) "Workmen" means laborers, workmen and mechanics.

290.260. 1. The department, as it deems necessary, shall from time to time investigate
2 and determine the prevailing hourly rate of wages **for heavy and highway construction work**
3 in the localities. **In doing so, the department shall accept and consider information**
4 **regarding local wage rates that is submitted in either paper or electronic formats.** A
5 determination applicable to every locality to be contained in a general wage order shall be made
6 annually on or before July first of each year for the Missouri state highways and transportation
7 commission and shall remain in effect until superseded by a new general wage order. In
8 determining prevailing rates, the department shall ascertain and consider the applicable wage
9 rates established by collective bargaining agreements, if any, and the rates that are paid generally
10 within the locality.

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

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

18 4. Within thirty days of the receipt of the objection, the department shall set a date for
19 a hearing on the objection. The date for the hearing shall be within sixty days of the receipt of
20 the objection. Written notice of the time and place of the hearing shall be given to the objectors
21 at least ten days 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, thereafter may introduce any evidence
27 that is material to the issues.

28 6. Within twenty days of the conclusion of the hearing, the department must 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 is subject
34 to review in accordance with the provisions of chapter 536. Any person affected, whether or not
35 the person participated in the proceedings resulting in the final determination, may have the
36 decision of the department reviewed. The filing of the final determination with the secretary of
37 state shall be considered a service of the final determination on persons not participating in the
38 administrative proceedings resulting in the final determination.

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

42 9. All proceedings in any court affecting a determination of the department under the
43 provisions of sections 290.210 to 290.340 shall have priority in hearing and determination over
44 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 **formats.** 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] **The department** shall, by March tenth of each year, make an initial determination
11 for each occupational title within the locality.

12 2. **The prevailing wage rate for an occupational title in a locality shall, with the**
13 **exception of localities that are counties of the third and fourth classification and any**
14 **county of the second classification with more than fifty-eight thousand but fewer than**
15 **sixty-five thousand inhabitants, be the wage rate most commonly paid, as measured by the**
16 **number of hours worked at each wage rate, for that occupational title within that locality.**
17 **In determining such prevailing wage rates, the department shall ascertain and consider the**
18 **applicable 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 fifty-eight**

22 thousand but fewer than sixty-five thousand inhabitants, the prevailing wage rate for an
23 occupational title within such locality shall be determined in the following manner:

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

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

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

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

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

48 (b) If wages were reported for an occupational title within a locality within the
49 previous six annual wage order reporting periods and the prevailing wage rate was not
50 determined by hours worked pursuant to a collective bargaining agreement in the most
51 recent annual wage order reporting period where such wages were reported, then the wage
52 rate paid in the most recent annual wage order reporting period when such wages were
53 reported shall be the prevailing wage rate for that occupational title within the locality;

54 (c) If no wages were reported for an occupational title within a locality within the
55 previous six annual wage order reporting periods, the department shall examine hours and
56 wages reported in all adjacent Missouri counties during the same periods. The most recent
57 reported wage rate in a given wage order period in the adjacent Missouri county with the
58 most reported hours actually worked for that occupational title in the wage period during

59 **the previous six annual wage order reporting periods shall be used to determine the**
60 **prevailing wage rate;**

61 **(d) If no wages were reported for an occupational title within any adjacent**
62 **Missouri county within the previous six annual wage order reporting periods, then the rate**
63 **paid pursuant to the current collective bargaining agreement shall be the prevailing wage**
64 **rate for that occupational title within the locality.**

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

68 [3.] **5.** At any time within thirty days after the certified copies of the determinations have
69 been filed with the secretary of state and the department, any person who is affected thereby may
70 object in writing to a determination or a part thereof that he deems objectionable by filing a
71 written notice with the department, stating the specific grounds of the objection. If no objection
72 is filed, the determination is final after thirty days.

73 [4.] **6.** After the receipt of the objection, the department shall set a date for a hearing on
74 the objection. The date for the hearing shall be within sixty days of the receipt of the objection.
75 Written notice of the time and place of the hearing shall be given to the objectors at least ten days
76 prior to the date set for the hearing.

77 [5.] **7.** The department at its discretion may hear each written objection separately or
78 consolidate for hearing any two or more written objections. At the hearing the department shall
79 first introduce in evidence the investigation it instituted and the other facts which were
80 considered at the time of the original determination which formed the basis for its determination.
81 The department, or the objector, or any interested party, thereafter may introduce any evidence
82 that is material to the issues.

83 [6.] **8.** Within twenty days of the conclusion of the hearing, the department shall rule on
84 the written objection and make the final determination that it believes the evidence warrants.
85 Immediately, the department shall file a certified copy of its final determination with the
86 secretary of state and with the department and shall serve a copy of the final determination on
87 all parties to the proceedings by personal service or by registered mail.

88 [7.] **9.** This final decision of the department of the prevailing wages in the locality for
89 each occupational title is subject to review in accordance with the provisions of chapter 536.
90 Any person affected, whether or not the person participated in the proceedings resulting in the
91 final determination, may have the decision of the department reviewed. The filing of the final
92 determination with the secretary of state shall be considered a service of the final determination
93 on persons not participating in the administrative proceedings resulting in the final
94 determination.

95 [8.] 10. At any time before trial any person affected by the final determination of the
96 department may intervene in the proceedings to review under chapter 536 and be made a party
97 to the proceedings.

98 [9.] 11. Any annual wage order made for a particular occupational title in a locality, **that**
99 **is based on the number of hours worked under a collective bargaining agreement**, may be
100 altered once each year, as provided in this subsection. The prevailing wage for each such
101 occupational title may be adjusted on the anniversary date of any collective bargaining agreement
102 which covers all persons in that particular occupational title in the locality in accordance with
103 any annual incremental wage increases set in the collective bargaining agreement. If the
104 prevailing wage for an occupational title is adjusted pursuant to this subsection, the employee's
105 representative or employer in regard to such collective bargaining agreement shall notify the
106 department of this adjustment, including the effective date of the adjustment. The adjusted
107 prevailing wage shall be in effect until the next final annual wage order is issued pursuant to this
108 section. The wage rates for any particular job, contracted and commenced within sixty days of
109 the contract date, which were set as a result of the annual or revised wage order, shall remain in
110 effect for the duration of that particular job.

111 [10.] 12. In addition to all other reporting requirements of sections 290.210 to 290.340,
112 each public body which is awarding a contract for a public works project shall, prior to beginning
113 of any work on such public works project, notify the department, on a form prescribed by the
114 department, of the scope of the work to be done, the various types of craftsmen who will be
115 needed on the project, and the date work will commence on the project.

✓