

FIRST REGULAR SESSION

HOUSE BILL NO. 409

97TH GENERAL ASSEMBLY

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

1091H.02I

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 wage determinations for third class counties.

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Section A. Sections 290.210 and 290.262, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 290.210 and 290.262, to read as follows: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

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

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

(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.

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

(5) "Prevailing hourly rate of wages":

(a) In a county of the third classification, the prevailing hourly rate of wages for such locality shall be deemed:

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.

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

22 **b. If no such rate can be determined under subparagraph a of this paragraph, the**
23 **median hourly wage estimate for occupational code 47-0000 in the construction and**
24 **extraction occupational code, published in the latest United States Bureau of Labor**
25 **Statistics publication shall be the prevailing wage for such occupational title.**

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

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

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

54 wholly or in part out of public funds when let to contract by said utility. It does not include any
55 work done for or by any drainage or levee district.

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

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 **pursuant to paragraph (b) of subdivision (5) of section**
7 **290.210**, the department shall ascertain and consider the applicable wage rates established by
8 collective bargaining agreements, if any, and the rates that are paid generally within the locality,
9 and shall, by March tenth of each year, make an initial determination for each occupational title
10 within the locality.

11 2. A certified copy of the initial determinations so made shall be filed immediately with
12 the 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 a determination or a part thereof that he deems objectionable by filing a
17 written notice with the department, stating the specific grounds of the objection. If no objection
18 is filed, the determination is final after thirty days.

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

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

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

34 7. This final decision of the department of the prevailing wages in the locality for each
35 occupational title is subject to review in accordance with the provisions of chapter 536. Any
36 person affected, whether or not the person participated in the proceedings resulting in the final
37 determination, may have the decision of the department reviewed. The filing of the final
38 determination with the secretary of state shall be considered a service of the final determination
39 on persons not participating in the administrative proceedings resulting in the final
40 determination.

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

44 9. **For prevailing wages determined pursuant to paragraph (b) of subdivision (5)**
45 **of section 290.210**, any annual wage order made for a particular occupational title in a locality
46 may be altered once each year, as provided in this subsection. The prevailing wage for each such
47 occupational title may be adjusted on the anniversary date of any collective bargaining agreement
48 which covers all persons in that particular occupational title in the locality in accordance with
49 any annual incremental wage increases set in the collective bargaining agreement. If the
50 prevailing wage for an occupational title is adjusted pursuant to this subsection, the employee's
51 representative or employer in regard to such collective bargaining agreement shall notify the
52 department of this adjustment, including the effective date of the adjustment. The adjusted
53 prevailing wage shall be in effect until the next final annual wage order is issued pursuant to this
54 section. The wage rates for any particular job, contracted and commenced within sixty days of
55 the contract date, which were set as a result of the annual or revised wage order, shall remain in
56 effect for the duration of that particular job.

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

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