

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 78
99TH GENERAL ASSEMBLY

0385H.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 290.230 and 290.262, RSMo, and to enact in lieu thereof three new sections relating to prevailing wages for public works contracts.

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

Section A. Sections 290.230 and 290.262, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 290.230, 290.262, and 290.344, to read as
3 follows:

290.230. 1. Not less than the prevailing hourly rate of wages for work of a similar
2 character in the locality in which the work is performed, and not less than the prevailing hourly
3 rate of wages for legal holiday and overtime work, shall be paid to all workmen employed by or
4 on behalf of any public body engaged in the construction of public works, exclusive of
5 maintenance work. Only such workmen as are directly employed by contractors or
6 subcontractors in actual construction work on the site of the building or construction job shall
7 be deemed to be employed upon public works. Any such workman who agrees in writing to
8 volunteer his or her labor without pay shall not be deemed to be employed upon public works,
9 and shall not be entitled to the prevailing hourly rate of wages. For the purposes of this section,
10 the term "workman who agrees in writing to volunteer his or her labor without pay" shall mean
11 a workman who volunteers his or her labor without any promise of benefit or remuneration for
12 such voluntary activity, and who is not a prisoner in any jail or prison facility and who is not
13 performing community service pursuant to disposition of a criminal case against him **or her**, and
14 is not otherwise employed for compensation at any time in the construction or maintenance work
15 on the same public works for which the workman is a volunteer. Under no circumstances may
16 an employer force, compel or otherwise intimidate an employee into performing work otherwise
17 paid by a prevailing wage as a volunteer.

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 2. When the hauling of materials or equipment includes some phase of construction other
19 than the mere transportation to the site of the construction, workmen engaged in this dual
20 capacity shall be deemed employed directly on public works.

21 **3. Any public body may opt out of the provisions of this section for the construction**
22 **of public works for which the contract awarded is in the amount of one million dollars or**
23 **less.**

24 **4. Any public body within a county of the third or fourth classification may opt out**
25 **of the provisions of this section for the construction of public works.**

290.262. 1. Except as otherwise provided in section 290.260, the department shall
2 annually determine the prevailing hourly rate of wages in each locality for each separate
3 occupational title. In doing so, the department shall accept and consider information regarding
4 local wage rates that is submitted in either paper or electronic formats. A final determination
5 applicable to every locality to be contained in an annual wage order shall be made annually on
6 or before July first of each year and shall remain in effect until superseded by a new annual wage
7 order or as otherwise provided in this section. The department shall, by March tenth of each
8 year, make an initial determination for each occupational title within the locality.

9 2. The prevailing wage rate for an occupational title in a locality shall, with the exception
10 of localities that are counties of the **second**, third, and fourth classification [~~and any county of~~
11 ~~the second classification with more than fifty-eight thousand but fewer than sixty-five thousand~~
12 ~~inhabitants~~], 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 that locality. In determining such prevailing
14 wage rates, the department shall ascertain and consider the applicable wage rates established by
15 collective bargaining agreements, if any, when no wages were reported.

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

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

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

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

34 ~~—— (4) If no work within a particular occupational title has been performed in a locality at~~
35 ~~any wage rate, the prevailing wage rate for that occupational title in that locality shall be~~
36 ~~determined in the following manner:~~

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

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

49 ~~—— (c) If no wages were reported for an occupational title within a locality within the~~
50 ~~previous six annual wage order reporting periods, the department shall examine hours and wages~~
51 ~~reported in all adjacent Missouri counties during the same periods. The most recent reported~~
52 ~~wage rate in a given wage order period in the adjacent Missouri county with the most reported~~
53 ~~hours actually worked for that occupational title in the wage period during the previous six~~
54 ~~annual wage order reporting periods shall be used to determine the prevailing wage rate;~~

55 ~~—— (d) If no wages were reported for an occupational title within any adjacent Missouri~~
56 ~~county within the previous six annual wage order reporting periods, then the rate paid pursuant~~
57 ~~to the current collective bargaining agreement shall be the prevailing wage rate for that~~
58 ~~occupational title within the locality] **sixty percent of the wage for an occupational title set**~~
59 ~~**by the federal prevailing wage, 40 U.S.C. Section 3142, as amended, or successor statute.**~~

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

63 5. At any time within thirty days after the certified copies of the determinations have
64 been filed with the secretary of state and the department, any person who is affected thereby may

65 object in writing to a determination or a part thereof that he **or she** deems objectionable by filing
66 a written notice with the department, stating the specific grounds of the objection. If no
67 objection is filed, the determination is final after thirty days.

68 6. After the receipt of the objection, the department shall set a date for a hearing on the
69 objection. The date for the hearing shall be within sixty days of the receipt of the objection.
70 Written notice of the time and place of the hearing shall be given to the objectors at least ten days
71 prior to the date set for the hearing.

72 7. The department at its discretion may hear each written objection separately or
73 consolidate for hearing any two or more written objections. At the hearing the department shall
74 first introduce in evidence the investigation it instituted and the other facts which were
75 considered at the time of the original determination which formed the basis for its determination.
76 The department, or the objector, or any interested party, thereafter may introduce any evidence
77 that is material to the issues.

78 8. Within twenty days of the conclusion of the hearing, the department shall rule on the
79 written objection and make the final determination that it believes the evidence warrants.
80 Immediately, the department shall file a certified copy of its final determination with the
81 secretary of state and with the department and shall serve a copy of the final determination on
82 all parties to the proceedings by personal service or by registered mail.

83 9. This final decision of the department of the prevailing wages in the locality for each
84 occupational title is subject to review in accordance with the provisions of chapter 536. Any
85 person affected, whether or not the person participated in the proceedings resulting in the final
86 determination, may have the decision of the department reviewed. The filing of the final
87 determination with the secretary of state shall be considered a service of the final determination
88 on persons not participating in the administrative proceedings resulting in the final
89 determination.

90 10. At any time before trial any person affected by the final determination of the
91 department may intervene in the proceedings to review under chapter 536 and be made a party
92 to the proceedings.

93 11. Any annual wage order made for a particular occupational title in a locality, that is
94 based on the number of hours worked under a collective bargaining agreement, may be altered
95 once each year, as provided in this subsection. The prevailing wage for each such occupational
96 title may be adjusted on the anniversary date of any collective bargaining agreement which
97 covers all persons in that particular occupational title in the locality in accordance with any
98 annual incremental wage increases set in the collective bargaining agreement. If the prevailing
99 wage for an occupational title is adjusted pursuant to this subsection, the employee's
100 representative or employer in regard to such collective bargaining agreement shall notify the

101 department of this adjustment, including the effective date of the adjustment. The adjusted
102 prevailing wage shall be in effect until the next final annual wage order is issued pursuant to this
103 section. The wage rates for any particular job, contracted and commenced within sixty days of
104 the contract date, which were set as a result of the annual or revised wage order, shall remain in
105 effect for the duration of that particular job.

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

**290.344. 1. This section shall be known and may be cited as the "School
2 Construction Act". The provisions of this section are intended solely to assist school
3 districts in obtaining the maximum value from their tax dollars expended for the
4 construction and maintenance of their educational facilities.**

**5 2. Notwithstanding any provision of law to the contrary, for work done on behalf
6 of a school, a school district in any county may exempt itself from the provisions of sections
7 290.210 to 290.340 upon majority vote of the school board of such district. If the school
8 district exempts itself from sections 290.210 to 290.340, the school district shall notify the
9 division of labor standards within the department of labor and industrial relations of such
10 exemption. If a school district does not exempt itself from sections 290.210 to 290.340, then
11 the prevailing hourly wage for public works on behalf of the school district shall be sixty
12 percent of the wages set by 40 U.S.C. Section 3142, as amended, or successor statute.**

**13 3. Notwithstanding any provision of law to the contrary, for work done on behalf
14 of a public institution of higher education, a public institution of higher education may
15 exempt itself from the provisions of sections 290.210 to 290.340 upon majority vote of the
16 governing board. If the public institution of higher education exempts itself from sections
17 290.210 to 290.340, the public institution of higher education shall notify the division of
18 labor standards within the department of labor and industrial relations of such exemption.
19 If a public institution of higher education does not exempt itself from sections 290.210 to
20 290.340, then the prevailing hourly wage for public works on behalf of the public
21 institution of higher education shall be sixty percent of the wages set by 40 U.S.C. Section
22 3142, as amended, or successor statute.**

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