

FIRST REGULAR SESSION

# SENATE BILL NO. 301

97TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS McKENNA, ROMINE AND WALSH.

Read 1st time February 12, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

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## 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.

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

Section A. Sections 290.210, 290.260 and 290.262, RSMo, are repealed and  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

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

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

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

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

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

18 (5) "Prevailing hourly rate of wages" means the wages paid generally, in

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

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

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

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

290.260. 1. The department, as it deems necessary, shall from time to  
2 time investigate and determine the prevailing hourly rate of wages in the

3 localities. **In doing so, the department shall accept and consider**  
4 **information regarding local wage rates that is submitted in either**  
5 **paper or electronic formats.** A determination applicable to every locality to  
6 be contained in a general wage order shall be made annually on or before July  
7 first of each year for the Missouri state highways and transportation commission  
8 and shall remain in effect until superseded by a new general wage order. [In  
9 determining prevailing rates, the department shall ascertain and consider the  
10 applicable wage rates] **The prevailing rate for an occupational title in a**  
11 **locality shall be the wage rate most commonly paid, as measured by the**  
12 **number of hours worked at each wage rate, for that occupational title**  
13 **within the locality. If no work within a particular occupational title**  
14 **has been performed in the locality at any wage rate, the prevailing rate**  
15 **for that occupational title in that locality shall be the wage rate most**  
16 **commonly paid, as measured by the number of hours worked at each**  
17 **wage rate, for that occupational title within all Missouri counties**  
18 **adjacent to that locality. For the purposes of this section, "adjacent**  
19 **county" means any county having a boundary that, at any point,**  
20 **touches any boundary of the locality for which the wage rate is being**  
21 **determined. If no work within a particular occupational title has been**  
22 **performed in the locality and its adjacent counties, the prevailing rate**  
23 **for that occupational title in that locality shall be the rate established by**  
24 **the collective bargaining [agreements, if any, and the rates that are paid**  
25 **generally within the locality] agreement, if any, covering that locality and**  
26 **the work that falls within that occupational title.**

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

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

36         4. Within thirty days of the receipt of the objection, the department shall  
37 set a date for a hearing on the objection. The date for the hearing shall be within  
38 sixty days of the receipt of the objection. Written notice of the time and place of

39 the hearing shall be given to the objectors at least ten days prior to the date set  
40 for the hearing.

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

48 6. Within twenty days of the conclusion of the hearing, the department  
49 must rule on the written objection and make the final determination that it  
50 believes the evidence warrants. Immediately, the department shall file a certified  
51 copy of its final determination with the secretary of state and with the  
52 department and shall serve a copy of the final determination on all parties to the  
53 proceedings by personal service or by registered mail.

54 7. This final decision of the department of the prevailing wages in the  
55 locality is subject to review in accordance with the provisions of chapter 536. Any  
56 person affected, whether or not the person participated in the proceedings  
57 resulting in the final determination, may have the decision of the department  
58 reviewed. The filing of the final determination with the secretary of state shall  
59 be considered a service of the final determination on persons not participating in  
60 the administrative proceedings resulting in the final determination.

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

64 9. All proceedings in any court affecting a determination of the  
65 department under the provisions of sections 290.210 to 290.340 shall have  
66 priority in hearing and determination over all other civil proceedings pending in  
67 the court, except election contests.

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

8 in effect until superseded by a new annual wage order or as otherwise provided  
9 in this section. [In determining prevailing rates, the department shall ascertain  
10 and consider the applicable wage rates] **The prevailing rate for an  
11 occupational title in a locality shall be the wage rate most commonly  
12 paid, as measured by the number of hours worked at each wage rate,  
13 for that occupational title within the locality. If no work within a  
14 particular occupational title has been performed during the reporting  
15 period in the locality at any wage rate, the prevailing rate for that  
16 occupational title in that locality shall be the wage rate most commonly  
17 paid, as measured by the number of hours worked at each wage rate,  
18 for that occupational title within all Missouri counties adjacent to that  
19 locality. For the purposes of this section, "adjacent county" means any  
20 county having a boundary that, at any point, touches any boundary of  
21 the locality for which the wage rate is being determined. If no work  
22 within a particular occupational title has been performed in the  
23 locality and its adjacent counties, the prevailing rate for that  
24 occupational title in that locality shall be the rate established by the  
25 collective bargaining [agreements, if any, and the rates that are paid generally  
26 within the locality, and] **agreement, if any, covering that locality and the  
27 work that falls within that occupational title. The department shall, by  
28 March tenth of each year, make an initial determination for each occupational  
29 title within the locality.****

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

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

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

44 hearing.

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

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

58           7. This final decision of the department of the prevailing wages in the  
59 locality for each occupational title is subject to review in accordance with the  
60 provisions of chapter 536. Any person affected, whether or not the person  
61 participated in the proceedings resulting in the final determination, may have the  
62 decision of the department reviewed. The filing of the final determination with  
63 the secretary of state shall be considered a service of the final determination on  
64 persons not participating in the administrative proceedings resulting in the final  
65 determination.

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

69           9. Any annual wage order made for a particular occupational title in a  
70 locality may be altered once each year, as provided in this subsection. The  
71 prevailing wage for each such occupational title may be adjusted on the  
72 anniversary date of any collective bargaining agreement which covers all persons  
73 in that particular occupational title in the locality in accordance with any annual  
74 incremental wage increases set in the collective bargaining agreement. If the  
75 prevailing wage for an occupational title is adjusted pursuant to this subsection,  
76 the employee's representative or employer in regard to such collective bargaining  
77 agreement shall notify the department of this adjustment, including the effective  
78 date of the adjustment. The adjusted prevailing wage shall be in effect until the  
79 next final annual wage order is issued pursuant to this section. The wage rates

80 for any particular job, contracted and commenced within sixty days of the  
81 contract date, which were set as a result of the annual or revised wage order,  
82 shall remain in effect for the duration of that particular job.

83         10. In addition to all other reporting requirements of sections 290.210 to  
84 290.340, each public body which is awarding a contract for a public works project  
85 shall, prior to beginning of any work on such public works project, notify the  
86 department, on a form prescribed by the department, of the scope of the work to  
87 be done, the various types of craftsmen who will be needed on the project, and the  
88 date work will commence on the project.

Unofficial ✓

Bill

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