

# SENATE BILL NO. 544

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

2379S.01I

ADRIANE D. CROUSE, Secretary

### AN ACT

To repeal sections 290.095, 290.210, 290.220, 290.230, 290.235, 290.257, 290.262, and 290.270, RSMo, and to enact in lieu thereof eight new sections relating to public contracts.

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

Section A. Sections 290.095, 290.210, 290.220, 290.230,  
2 290.235, 290.257, 290.262, and 290.270, RSMo, are repealed and  
3 eight new sections enacted in lieu thereof, to be known as  
4 sections 290.095, 290.210, 290.220, 290.230, 290.235, 290.257,  
5 290.262, and 290.270, to read as follows:

290.095. 1. No contractor or subcontractor may  
2 directly or indirectly receive a wage subsidy, bid  
3 supplement, or rebate for employment on a public works  
4 project if such wage subsidy, bid supplement, or rebate has  
5 the effect of reducing the wage rate paid by the employer  
6 [on a given occupational title] below the wage rate required  
7 to be paid for such project pursuant to sections 290.210 to  
8 290.340.

9 2. In the event a wage subsidy, bid supplement, or  
10 rebate is lawfully provided or received under subsection 1  
11 of this section, the entity receiving such subsidy,  
12 supplement, or rebate shall report the date and amount of  
13 such subsidy, supplement, or rebate to the public body  
14 within thirty days of receipt of payment. This disclosure  
15 report shall be a matter of public record under chapter 610.

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

16           3. Any employer in violation of this section shall owe  
17 to the public body double the dollar amount per hour that  
18 the wage subsidy, bid supplement, or rebate has reduced the  
19 wage rate paid by the employer below the wage rate required  
20 to be paid for such project pursuant to sections 290.210 to  
21 290.340 for each hour that work was performed. It shall be  
22 the duty of the department to calculate the dollar amount  
23 owed to the public body under this section.

          290.210. As used in sections 290.210 to 290.340,  
2 unless the context indicates otherwise, the following terms  
3 shall mean:

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

12           (2) ] "Construction", construction, reconstruction,  
13 improvement, enlargement, alteration, painting and  
14 decorating, or major repair;

15           [(3)] (2) "Department", the department of labor and  
16 industrial relations;

17           [(4) "Labor organization" or "union", any entity which  
18 has been designated pursuant to the terms of the National  
19 Labor Relations Act as the exclusive bargaining  
20 representative of employees of employers engaged in the  
21 construction industry, which entity or affiliated entity has  
22 ever had a collective bargaining agreement which determined  
23 an occupational title wage rate;

24           (5)] (3) "Locality", the county where the physical  
25 work upon public works is performed;

26           [(6)] (4) "Maintenance work", the repair, but not the  
27 replacement, of existing facilities when the size, type or  
28 extent of the existing facilities is not thereby changed or  
29 increased;

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

56 assumption of an enforceable commitment to bear the costs of  
57 a plan or program as provided herein, or any combination  
58 thereof, where the aggregate of such payments, contributions  
59 and costs is not less than the rate of pay plus the other  
60 amounts as provided herein;

61 (8)] (5) "Public body", the state of Missouri or any  
62 officer, official, authority, board or commission of the  
63 state, or other political subdivision thereof, or any  
64 institution supported in whole or in part by public funds;

65 [(9)] (6) "Public works", all fixed works constructed  
66 for public use or benefit or paid for wholly or in part out  
67 of public funds. It also includes any work done directly by  
68 any public utility company when performed by it pursuant to  
69 the order of the public service commission or other public  
70 authority whether or not it be done under public supervision  
71 or direction or paid for wholly or in part out of public  
72 funds when let to contract by said utility. It does not  
73 include any work done for or by any drainage or levee  
74 district;

75 [(10)] (7) "Public works contracting minimum wage",  
76 the wage rate determined by the department pursuant to  
77 section 290.257;

78 [(11)] (8) "Workers", laborers and mechanics.

290.220. It is hereby declared to be the policy of the  
2 state of Missouri that a wage of no less than the  
3 [prevailing hourly rate of wages for work of a similar  
4 character in the locality in which the work is performed or  
5 the] public works contracting minimum wage[, whichever is  
6 applicable,] shall be paid to all workers employed by or on  
7 behalf of any public body engaged in public works, exclusive  
8 of maintenance work.

290.230. 1. (1) Except as otherwise provided in this  
2 section, not less than the [prevailing hourly rate of wages  
3 for work of a similar character in the locality in which the  
4 work is performed or the] public works contracting minimum  
5 wage[, whichever is applicable,] shall be paid to all  
6 workers employed by or on behalf of any public body engaged  
7 in the construction of public works, exclusive of  
8 maintenance work.

9 (2) For all work performed on a Sunday or a holiday,  
10 not less than twice the [prevailing hourly rate of wages for  
11 work of a similar character in the locality in which the  
12 work is performed or the] public works contracting minimum  
13 wage[, whichever is applicable,] shall be paid to all  
14 workers employed by or on behalf of any public body engaged  
15 in the construction of public works, exclusive of  
16 maintenance work. For purposes of this subdivision,  
17 "holiday" shall include each of the following:

- 18 (a) January first;
- 19 (b) The last Monday in May;
- 20 (c) July fourth;
- 21 (d) The first Monday in September;
- 22 (e) November eleventh;
- 23 (f) The fourth Thursday in November; and
- 24 (g) December twenty-fifth;

25 If any holiday falls on a Sunday, the following Monday shall  
26 be considered a holiday.

27 (3) For all overtime work performed, not less than one  
28 and one-half the [prevailing hourly rate of wages for work  
29 of a similar character in the locality in which the work is  
30 performed or the] public works contracting minimum wage[,  
31 whichever is applicable,] shall be paid to all workers

32 employed by or on behalf of any public body engaged in the  
33 construction of public works, exclusive of maintenance work  
34 or contractual obligation. For purposes of this  
35 subdivision, "overtime work" shall include work that exceeds  
36 ten hours in one day and work in excess of forty hours in  
37 one calendar week; and

38 (4) A thirty-minute lunch period on each calendar day  
39 shall be allowed for each worker on a public works project,  
40 provided that such time shall not be considered as time  
41 worked.

42 2. Only workers that are directly employed by  
43 contractors or subcontractors in actual construction work on  
44 the site of the building or construction job shall be deemed  
45 to be employed upon public works.

46 3. Any worker who agrees in writing to volunteer his  
47 or her labor without pay shall not be deemed to be employed  
48 upon public works, and shall not be entitled to the wage  
49 rates required pursuant to sections 290.210 to 290.340. For  
50 the purposes of this section, the term "worker who agrees in  
51 writing to volunteer his or her labor without pay" shall  
52 mean a worker who volunteers his or her labor without any  
53 promise of benefit or remuneration for such voluntary  
54 activity, and who is not a prisoner in any jail or prison  
55 facility and who is not performing community service  
56 pursuant to disposition of a criminal case against him or  
57 her, and is not otherwise employed for compensation at any  
58 time in the construction or maintenance work on the same  
59 public works for which the worker is a volunteer. Under no  
60 circumstances may an employer or a public body force, compel  
61 or otherwise intimidate a worker into performing work  
62 otherwise paid at [a prevailing wage rate or at] a public  
63 works contracting minimum wage rate as a volunteer.

64           4. When the hauling of materials or equipment includes  
65 some phase of construction other than the mere  
66 transportation to the site of the construction, workers  
67 engaged in this dual capacity shall be deemed employed  
68 directly on public works.

69           5. (1) The provisions of sections 290.210 to 290.340  
70 shall not apply to the construction of public works for  
71 which either the engineer's estimate or the bid accepted by  
72 the public body for the total project cost is in the amount  
73 of seventy-five thousand dollars or less.

74           (2) The total project cost shall be based upon the  
75 entire project and not individual projects within a larger  
76 project.

77           (3) The total project cost shall include the value of  
78 work performed on the project by every person paid by a  
79 contractor or subcontractor for that person's work on the  
80 project. The total project cost shall additionally include  
81 all materials and supplies purchased for the project.

82           6. A public body shall not divide a project into  
83 multiple contracts for the purpose of lowering the total  
84 project cost below the threshold described in subsection 5  
85 of this section.

86           7. For any public works project for which either the  
87 engineer's estimate or the bid accepted by the public body  
88 for the total project cost is in the amount of seventy-five  
89 thousand dollars or less that becomes subject to a change  
90 order that increases the total project cost in excess of  
91 seventy-five thousand dollars, the provisions of sections  
92 290.210 to 290.340 shall apply only to that portion of the  
93 project that was in excess of seventy-five thousand dollars.

94           8. Notwithstanding any provision of law to the  
95 contrary, for the purposes of construction of public works

96 for which either the engineer's estimate or the bid accepted  
97 by the public body for the total project cost is in the  
98 amount of ten thousand dollars or less [for all occupational  
99 titles], public bodies shall be exempt from any law  
100 requiring the use of competitive bids.

290.235. 1. Employers may use entry-level workers and  
2 federally registered apprentices for on-the-job training  
3 periods. The wage rate for on-the-job training workers  
4 shall be equal to fifty percent of the applicable wage rate  
5 for a journeyman worker [under the appropriate occupational  
6 title] for a specific locality.

7 2. The combined total of entry-level workers and  
8 federally registered apprentices shall not exceed a one-to-  
9 one ratio with the number of journeyman workers [in any  
10 occupational title] on a public works project subject to  
11 sections 290.210 to 290.340.

290.257. 1. [(1) In determining the prevailing wage  
2 rate, the department shall accept and consider information  
3 submitted in either paper or electronic format regarding  
4 local wage rates for construction projects that occurred  
5 during the year preceding the annual wage order to be  
6 issued, provided that information regarding local wage rates  
7 for entry-level workers and federally registered apprentices  
8 shall not be considered.

9 (2) (a) The prevailing wage rate for each  
10 occupational title shall be equal to the weighted average  
11 wage for that occupational title.

12 (b) For purposes of this subdivision, the following  
13 terms shall mean:

14 a. "Reported wage sum", for each occupational title,  
15 the sum of every product of each reported wage rate, which

16 shall include fringe benefits, multiplied by the total  
17 number of reportable hours at such wage rate; and

18 b. "Weighted average wage", the reported wage sum for  
19 each occupational title divided by the total number of  
20 reportable hours for that occupational title.

21 2.] The department shall annually calculate the public  
22 works contracting minimum wage in each locality. The public  
23 works contracting minimum wage shall be equal to one hundred  
24 twenty percent of the average hourly wage in a particular  
25 locality, as determined by the Missouri economic research  
26 and information center within the department of economic  
27 development, or any successor agency.

28 [3.] 2. A final determination of the [prevailing  
29 hourly rate of wages and the] public works contracting  
30 minimum wage applicable to every locality to be contained in  
31 an annual wage order shall be made annually on or before  
32 July 1, 2019, and July first of each year thereafter. The  
33 wage order shall remain in effect until superseded by a new  
34 annual wage order. The department shall, by March 10, 2019,  
35 and March tenth of each year thereafter, make an initial  
36 determination of the [prevailing wage rate for each  
37 occupational title within the locality as well as an initial  
38 determination as to the] public works contracting minimum  
39 wage. Objections may be filed as to any initial  
40 determination as provided in section 290.262.

41 [4. (1) If the total number of reportable hours that  
42 are paid pursuant to a collective bargaining agreement and  
43 the total number of reportable hours that are not paid  
44 pursuant to a collective bargaining agreement equal or  
45 exceed, in the aggregate, one thousand hours for any  
46 particular occupational title within a locality, workers  
47 engaged in that occupational title in such locality shall be

48 paid the prevailing wage rate determined by the department  
49 pursuant to this section.

50 (2) If the total number of reportable hours that are  
51 paid pursuant to a collective bargaining agreement and the  
52 total number of reportable hours that are not paid pursuant  
53 to a collective bargaining agreement do not equal or exceed,  
54 in the aggregate, one thousand hours for any particular  
55 occupational title within a locality, workers engaged in  
56 that occupational title in such locality shall be paid the  
57 public works contracting minimum wage.

58 5. For purposes of this section, the term "reportable  
59 hours" shall mean hours reported by a contractor for work  
60 performed under such contractor in a particular occupational  
61 title within a particular locality.

62 6. (1) The different types of occupational titles to  
63 which sections 290.210 to 290.340 shall apply shall be  
64 limited to, and shall include, all of the following:

- 65 (a) Asbestos worker;
- 66 (b) Boilermaker;
- 67 (c) Bricklayer;
- 68 (d) Carpenter, which shall include pile driver,  
69 millwright, lather, and linoleum layer;
- 70 (e) Cement mason, which shall include plasterer;
- 71 (f) Communications technician;
- 72 (g) Electrician;
- 73 (h) Elevator constructor;
- 74 (i) Glazier;
- 75 (j) Ironworker;
- 76 (k) General laborer, including first semi-skilled  
77 laborer and second semi-skilled laborer;

78           (l) Mason, which shall include marble mason, marble  
79 finisher, terrazzo worker, terrazzo finisher, tile setter,  
80 and tile finisher;

81           (m) Operating engineer, which shall include operating  
82 engineer group one, operating engineer group two, operating  
83 engineer group three, operating engineer group three-A,  
84 operating engineer group four, and operating engineer group  
85 five;

86           (n) Outside lineman, lineman operator, groundman,  
87 lineman tree trimmer, groundman tree trimmer, and any  
88 combination thereof;

89           (o) Painter;

90           (p) Plumber, which shall include pipefitter;

91           (q) Roofer;

92           (r) Sheet metal worker;

93           (s) Sprinkler fitter; and

94           (t) Truck driver, which shall include truck control  
95 service driver, truck driver group one, truck driver group  
96 two, truck driver group three, and truck driver group four.

97           (2) Each occupational title listed in subdivision (1)  
98 of this subsection shall have the same meaning and  
99 description as given to such occupational title in 8 CSR 30-  
100 3.060.]

290.262. 1. A certified copy of any initial wage  
2 determinations made pursuant to section 290.257 shall be  
3 filed immediately with the secretary of state and with the  
4 department in Jefferson City. Copies shall be supplied by  
5 the department to all persons requesting them within ten  
6 days after the filing.

7           2. At any time within thirty days after the certified  
8 copies of the determinations have been filed with the  
9 secretary of state and the department, any person who is

10 affected thereby may object in writing to a determination or  
11 a part thereof that he or she deems objectionable by filing  
12 a written notice with the department, stating the specific  
13 grounds of the objection. If no objection is filed, the  
14 determination is final after thirty days.

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

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

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

38 6. This final decision of the department of the  
39 [prevailing] wages in [the] **each** locality [for each  
40 occupational title] is subject to review in accordance with  
41 the provisions of chapter 536. Any person affected, whether

42 or not the person participated in the proceedings resulting  
43 in the final determination, may have the decision of the  
44 department reviewed. The filing of the final determination  
45 with the secretary of state shall be considered a service of  
46 the final determination on persons not participating in the  
47 administrative proceedings resulting in the final  
48 determination.

49 7. At any time before trial any person affected by the  
50 final determination of the department may intervene in the  
51 proceedings to review under chapter 536 and be made a party  
52 to the proceedings.

53 8. [Any annual wage order made for a particular  
54 occupational title in a locality, that is based on the  
55 number of hours worked under a collective bargaining  
56 agreement, may be altered once each year, as provided in  
57 this subsection. The prevailing wage for each such  
58 occupational title may be adjusted on the anniversary date  
59 of any collective bargaining agreement which covers all  
60 persons in that particular occupational title in the  
61 locality in accordance with any annual incremental wage  
62 increases set in the collective bargaining agreement. If  
63 the prevailing wage for an occupational title is adjusted  
64 pursuant to this subsection, the employee's representative  
65 or employer in regard to such collective bargaining  
66 agreement shall notify the department of this adjustment,  
67 including the effective date of the adjustment. The  
68 adjusted prevailing wage shall be in effect until the next  
69 final annual wage order is issued pursuant to this section.  
70 The wage rates for any particular job, contracted and  
71 commenced within sixty days of the contract date, which were  
72 set as a result of the annual or revised wage order, shall  
73 remain in effect for the duration of that particular job.

74           9.] In addition to all other reporting requirements of  
75 sections 290.210 to 290.340, each public body which is  
76 awarding a contract for a public works project shall, prior  
77 to beginning of any work on such public works project,  
78 notify the department, on a form prescribed by the  
79 department, of the scope of the work to be done, the various  
80 types of craftsmen who will be needed on the project, and  
81 the date work will commence on the project.

          290.270. The finding of the department ascertaining  
2 and declaring the [prevailing hourly rate of wages and the]  
3 public works contracting minimum wage shall be final for the  
4 locality, unless reviewed under the provisions of sections  
5 290.210 to 290.340. Nothing in sections 290.210 to 290.340,  
6 however, shall be construed to prohibit the payment to any  
7 worker employed on any public work of more than the  
8 [prevailing hourly rate of wages or the] public works  
9 contracting minimum wage. Nothing in sections 290.210 to  
10 290.340 shall be construed to limit the hours of work which  
11 may be performed by any worker in any particular period of  
12 time.

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