

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 596**  
96TH GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industry, January 26, 2012, with recommendation that the Senate Committee Substitute do pass.

4925S.02C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 34.209, 34.212, 34.216, 34.217, 290.210, 290.250, 290.262, 290.290, and 290.340, RSMo, and to enact in lieu thereof eleven new sections relating to public contracts, with penalty provisions.

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

Section A. Sections 34.209, 34.212, 34.216, 34.217, 290.210, 290.250, 290.262, 290.290, and 290.340, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 34.207, 34.209, 34.212, 34.216, 34.217, 290.210, 290.250, 290.262, 290.290, 290.337, and 290.340, to read as follows:

**34.207. As used in this chapter, the term "public funds" shall mean those funds belonging to the state, any agency of the state, or any instrumentality or political subdivision thereof.**

**34.209. Except as provided in section 34.216,** the state, any agency of the state, or any instrumentality **or political subdivision** thereof, when engaged in procuring or letting contracts for construction of a project that is funded [by greater than fifty percent of state funds] **in any amount with public funds**, shall ensure that bid specification, project agreements, and other controlling documents entered into, required, or subject to approval by the state, agency, [or] instrumentality, **or political subdivision** do not:

- (1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or related projects; or
- (2) Discriminate against bidders, offerors, contractors, or subcontractors

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

12 for entering or refusing to enter or to remain signatory or otherwise adhere to  
13 agreements with one or more labor organizations on the same or related  
14 construction projects.

34.212. 1. The state, any agency of the state, or any instrumentality, **or**  
2 **political subdivision** thereof shall not issue grants or enter into cooperative  
3 agreements for construction projects, a condition of which requires that bid  
4 specifications, project agreements, or other controlling documents pertaining to  
5 the grant or cooperative agreement contain any of the elements specified in  
6 section 34.209.

7 2. The state, any agency of the state, or any instrumentality, **or political**  
8 **subdivision** thereof shall exercise such authority as may be required to preclude  
9 a grant recipient or party to a cooperative agreement from imposing any of the  
10 elements specified in section 34.209 in connection with any grant or cooperative  
11 agreement awarded or entered into. Nothing in sections 34.203 to 34.216 shall  
12 prohibit contractors or subcontractors from voluntarily entering into agreements  
13 described in section 34.209.

34.216. 1. For purposes of this section, the term "project labor agreement"  
2 shall be defined as a [multiemployer, multiunion] pre-hire agreement **by or**  
3 **between an employer and one or more labor union** designed to systemize  
4 labor relations at a construction site that is required by the state, **any agency**  
5 **of the state, or [a] any instrumentality, or political subdivision [of the state]**  
6 **thereof** as a condition of [a] bid specification, **bid submission, or contract**  
7 **award** for a construction project, thereby insuring that [all] contractors and  
8 subcontractors on a project comply with the terms of a union-only  
9 agreement. **The term "agreement" shall include any arrangement, written**  
10 **or otherwise communicated, whether explicit or implicit in nature.**

11 2. The state, **any agency of the state, or any instrumentality, or [a]**  
12 **political subdivision [of the state may] thereof shall not enter into or require**  
13 a union-only project labor agreement for the procurement of construction  
14 services[, except as provided in section 34.209, on a project-by-project basis only  
15 if the project is funded fifty percent or less with state funds and only on the  
16 condition that:

17 (1) The state or political subdivision must analyze the impact of a  
18 union-only project labor agreement and consider:

19 (a) Whether the union-only project labor agreement advances the interests  
20 of the public entity and its citizens;

21 (b) Whether the union-only project labor agreement is appropriate  
22 considering the complexity, size, cost impact, and need for efficiency on the  
23 project;

24 (c) Whether the union-only project labor agreement impacts the  
25 availability of a qualified work force; and

26 (d) Whether the scope of the union-only project labor agreement has a  
27 business justification for the project as bid;

28 (2) The state or political subdivision shall publish the findings of  
29 subdivision (1) of this subsection in a document titled "Intent to Enter Into a  
30 Union Project Labor Agreement". The document shall establish a rational basis  
31 upon which the state or political subdivision bases its intent to require a  
32 union-only project labor agreement for the project;

33 (3) No fewer than fourteen days but not more than thirty days following  
34 publication of the notice of a public hearing, the state or political subdivision  
35 shall conduct a public hearing on whether to proceed with its intent to require a  
36 union-only project labor agreement;

37 (4) Within thirty days of the public hearing set forth in subdivision (3) of  
38 this subsection, the state or political subdivision shall publish its determination  
39 on whether or not to require a union-only project labor agreement.

40 3. (1) Any interested party may, within thirty days of the determination  
41 of the state or political subdivision as set forth in subdivision (4) of subsection 2  
42 of this section, appeal to the labor and industrial relations commission for a  
43 determination as to whether the state or political subdivision complied with  
44 subsection 2 of this section for a union-only project labor agreement as defined  
45 in subsection 1 of this section.

46 (2) The labor and industrial relations commission shall consider the  
47 appeal in subdivision (1) of this section under a rational basis standard of review.

48 (3) The labor and industrial relations commission shall hold a hearing on  
49 the appeal within sixty days of the filing of the appeal. The commission shall  
50 issue its decision within ninety days of the filing date of the appeal.

51 (4) Any aggrieved party from the labor and industrial relations  
52 commission decision set forth in subdivision (3) of this subsection may file an  
53 appeal with the circuit court of Cole County within thirty days of the  
54 commission's decision].

34.217. [Notwithstanding the provisions of section 1.140, the provisions  
2 of sections 290.095 and 290.250 and sections 34.203 to 34.216 shall not be

3 severable. In the event a court of competent jurisdiction rules that any part of  
4 this act is unenforceable, the entire act shall be rendered null and void.] **Any**  
5 **person submitting a bid, or who would have submitted a bid except for**  
6 **violations of this chapter, shall have standing to seek equitable relief**  
7 **and monetary damages in a court of competent jurisdiction for**  
8 **monetary losses resulting from violations of this chapter, including but**  
9 **not limited to, setting aside award of a contract, ordering a contract to**  
10 **be rebid, requiring award of a contract to a different bidder than**  
11 **originally awarded, awarding monetary damages deemed appropriate**  
12 **by the court, including award of reasonable attorney's fees, or**  
13 **awarding a combination of such forms or relief.**

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

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

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

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

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

19 (5) "Prevailing hourly rate of wages" means the wages paid generally, in  
20 the locality in which the public works is being performed[, to workmen engaged  
21 in work of a similar character including the basic hourly rate of pay and the  
22 amount of the rate of contributions irrevocably made by a contractor or  
23 subcontractor to a trustee or to a third person pursuant to a fund, plan or  
24 program, and the amount of the rate of costs to the contractor or subcontractor  
25 which may be reasonably anticipated in providing benefits to workmen and

26 mechanics pursuant to an enforceable commitment to carry out a financially  
27 responsible plan or program which was communicated in writing to the workmen  
28 affected, for medical or hospital care, pensions on retirement or death,  
29 compensation for injuries or illness resulting from occupational activity, or  
30 insurance to provide any of the foregoing, for unemployment benefits, life  
31 insurance, disability and sickness insurance, accident insurance, for vacation and  
32 holiday pay, for defraying costs of apprenticeship or other similar programs, or  
33 for other bona fide fringe benefits, but only where the contractor or subcontractor  
34 is not required by other federal or state law to provide any of the benefits;  
35 provided, that the obligation of a contractor or subcontractor to make payment in  
36 accordance with the prevailing wage determinations of the department, insofar  
37 as sections 290.210 to 290.340 are concerned, may be discharged by the making  
38 of payments in cash, by the making of irrevocable contributions to trustees or  
39 third persons as provided herein, by the assumption of an enforceable  
40 commitment to bear the costs of a plan or program as provided herein, or any  
41 combination thereof, where the aggregate of such payments, contributions and  
42 costs is not less than the rate of pay plus the other amounts as provided  
43 herein]. **The prevailing hourly rate of wages for each locality shall be**  
44 **deemed:**

45 **(a) The median hourly wage estimate for the construction and**  
46 **extraction occupational code most closely resembling the occupational**  
47 **title as published in the latest United States Bureau of Labor Statistics**  
48 **by Metropolitan and Non-Metropolitan Area Occupational Employment**  
49 **Wage Estimate; or**

50 **(b) If no such rate can be determined under paragraph (a) of this**  
51 **subdivision, the median hourly wage estimate for occupational code 47-**  
52 **0000 in the construction and extraction occupational code, published**  
53 **in the latest United States Bureau of Labor Statistics publication shall**  
54 **be the prevailing wage for such occupational title;**

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

58 (7) "Public works" means all fixed works constructed for public use or  
59 benefit or paid for wholly or in part out of public funds. It also includes any work  
60 done directly by any public utility company when performed by it pursuant to the  
61 order of the public service commission or other public authority whether or not

62 it be done under public supervision or direction or paid for wholly or in part out  
63 of public funds when let to contract by said utility. It does not include any work  
64 done for or by any drainage or levee district.

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

290.250. 1. Every public body authorized to contract for or construct  
2 public works before advertising for bids or undertaking such construction shall  
3 request the department to determine the prevailing rates of wages for workmen  
4 for the class or type of work called for by the public works, in the locality where  
5 the work is to be performed. The department shall determine the prevailing  
6 hourly rate of wages in the locality in which the work is to be performed for each  
7 type of workman required to execute the contemplated contract and such  
8 determination or schedule of the prevailing hourly rate of wages shall be attached  
9 to and made a part of the specifications for the work. The public body shall then  
10 specify in the resolution or ordinance and in the call for bids for the contract what  
11 is the prevailing hourly rate of wages in the locality for each type of workman  
12 needed to execute the contract and also the general prevailing rate for legal  
13 holiday and overtime work. It shall be mandatory upon the contractor to whom  
14 the contract is awarded and upon any subcontractor under him to pay not less  
15 than the specified rates to all workmen employed by them in the execution of the  
16 contract. The public body awarding the contract shall cause to be inserted in the  
17 contract a stipulation to the effect that not less than the prevailing hourly rate  
18 of wages shall be paid to all workmen performing work under the contract. The  
19 employer shall forfeit as a penalty to the state, county, city and county, city,  
20 town, district or other political subdivision on whose behalf the contract is made  
21 or awarded one hundred dollars for each workman employed, for each calendar  
22 day, or portion thereof, such workman is paid less than the said stipulated rates  
23 for any work done under said contract, by him or by any subcontractor under him,  
24 and the said public body awarding the contract shall cause to be inserted in the  
25 contract a stipulation to this effect. It shall be the duty of such public body  
26 awarding the contract, and its agents and officers, to take cognizance of all  
27 complaints of all violations of the provisions of sections 290.210 to 290.340  
28 committed in the course of the execution of the contract, and, when making  
29 payments to the contractor becoming due under said contract, to withhold and  
30 retain therefrom all sums and amounts due and owing as a result of any violation  
31 of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold  
32 from any subcontractor under him sufficient sums to cover any penalties withheld

33 from him by the awarding body on account of said subcontractor's failure to  
34 comply with the terms of sections 290.210 to 290.340, and if payment has already  
35 been made to him, the contractor may recover from him the amount of the penalty  
36 in a suit at law.

37         2. In determining whether a violation of sections 290.210 to 290.340 has  
38 occurred, [and whether the penalty under subsection 1 of this section shall be  
39 imposed,] it shall be the duty of the department to investigate any claim of  
40 violation. Upon completing such investigation, the department shall notify the  
41 employer of its findings. If the department concludes that a violation of sections  
42 290.210 to 290.340 has occurred and a penalty may be due, the department shall  
43 notify the employer of such finding by providing a notice of [penalty] **violation**  
44 to the employer. [Such penalty shall not be due until forty-five days after the  
45 date of the notice of the penalty.]

46         3. The employer shall have the right to dispute such notice of [penalty]  
47 **violation** in writing to the department within forty-five days of the date of the  
48 notice. Upon receipt of this written notice of dispute, the department shall notify  
49 the employer of the right to resolve such dispute through arbitration. The state  
50 and the employer shall submit to an arbitration process to be established by the  
51 department by rule, and in conformance with the guidelines and rules of the  
52 American Arbitration Association or other arbitration process mutually agreed  
53 upon by the employer and the state. If at any time prior to the department  
54 pursuing an enforcement action [to enforce the monetary penalty provisions of  
55 subsection 1 of this section] against the employer, the employer pays the back  
56 wages as determined by either the department or the arbitrator, the department  
57 shall be precluded from initiating any enforcement action to impose the monetary  
58 penalty provisions of subsection 1 of this section **and no other administrative,**  
59 **civil, or criminal action shall be taken against the contractor,**  
60 **subcontractor, employee, agent, owner, or principal of the**  
61 **employer. Any dispute resolved pursuant to this subsection prior to the**  
62 **department initiating an enforcement action shall not be considered a**  
63 **violation for the purposes of section 290.330.**

64         4. If the employer fails to pay all wages due as determined by the  
65 arbitrator within forty-five days following the conclusion of the arbitration  
66 process, or if the employer fails to exercise the right to seek arbitration, the  
67 department may then pursue an enforcement action to enforce the monetary  
68 penalty provisions of subsection 1 of this section against the employer. If the

69 court orders payment of the penalties as prescribed in subsection 1 of this section,  
70 the department shall be entitled to recover its actual cost of enforcement from  
71 such penalty amount.

72 5. Nothing in this section shall be interpreted as precluding an action for  
73 enforcement filed by an aggrieved employee as otherwise provided in law.

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.] A final  
4 determination applicable to every locality to be contained in an annual wage  
5 order shall be made annually on or before July first of each year and shall remain  
6 in effect until superseded by a new annual wage order or as otherwise provided  
7 in this section. [In determining prevailing rates, the department shall ascertain  
8 and consider the applicable wage rates established by collective bargaining  
9 agreements, if any, and the rates that are paid generally within the locality, and  
10 shall, by March tenth of each year, make an initial determination for each  
11 occupational title within the locality.]

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

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

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

27 5. The department at its discretion may hear each written objection  
28 separately or consolidate for hearing any two or more written objections. At the  
29 hearing the department shall first introduce in evidence the investigation it  
30 instituted and the other facts which were considered at the time of the original  
31 determination which formed the basis for its determination. The department, or

32 the objector, or any interested party, thereafter may introduce any evidence that  
33 is material to the issues.

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

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

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

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

65           10. In addition to all other reporting requirements of sections 290.210 to  
66 290.340, each public body which is awarding a contract for a public works project  
67 shall, prior to beginning of any work on such public works project, notify the

68 department, on a form prescribed by the department, of the scope of the work to  
69 be done, the various types of craftsmen who will be needed on the project, and the  
70 date work will commence on the project.

290.290. 1. The contractor and each subcontractor engaged in any  
2 construction of public works shall keep full and accurate records clearly  
3 indicating the names, occupations and crafts of every workman employed by them  
4 in connection with the public work together with an accurate record of the  
5 number of hours worked by each workman and the actual wages paid  
6 therefor. The payroll records required to be so kept shall be open to inspection  
7 by any authorized representative of the contracting public body or of the  
8 department at any reasonable time and as often as may be necessary and such  
9 records shall not be destroyed or removed from the state for the period of one year  
10 following the completion of the public work in connection with which the records  
11 are made.

12 2. Each contractor and subcontractor shall file with the contracting public  
13 body upon completion of the public work and prior to final payment therefor an  
14 affidavit stating that he had fully complied with the provisions and requirements  
15 of this chapter, and no public body shall be authorized to make final payment  
16 until such affidavit is filed therewith in proper form and order.

17 [3. Each contractor and subcontractor engaged in any construction of  
18 public works shall have its name, acceptable abbreviation or recognizable logo  
19 and the name of the city and state of the mailing address of the principal office  
20 of the company, on each motor vehicle and motorized self-propelled piece of  
21 equipment which is used in connection with such public works project during the  
22 time the contractor or subcontractor is engaged on such project. The sign shall  
23 be legible from a distance of twenty feet but the size of the lettering need not be  
24 larger than two inches. In cases where equipment is leased or where affixing a  
25 legible sign to the equipment is impractical, the contractor may place a temporary  
26 stationary sign, with the information required pursuant to this subsection, at the  
27 main entrance of the construction project in place of affixing the required  
28 information on the equipment so long as such sign is not in violation of any state  
29 or federal statute, rule or regulation. Motor vehicles which are required to have  
30 similar information affixed thereto pursuant to requirements of a regulatory  
31 agency of the state or federal government are exempt from the provisions of this  
32 subsection.

33 4. The provisions of subsection 3 of this section shall not apply to

34 construction of public works for which the contract awarded is in the amount of  
35 two hundred fifty thousand dollars or less.]

**290.337. Sections 290.210 to 290.340 shall not apply in any county  
2 that receives federal disaster assistance under a federal disaster  
3 declaration for public works projects undertaken as a result of the  
4 disaster.**

290.340. Any officer, official, member, agent or representative of any  
2 public body, contractor or subcontractor who willfully violates and omits to  
3 comply with any of the provisions and requirements of sections 290.210 to  
4 290.340 shall be punished for each violation thereof by a fine not exceeding five  
5 hundred dollars[, or by imprisonment not exceeding six months, or by both such  
6 fine and imprisonment]. Each day such violation or omission continues shall  
7 constitute a separate offense as contemplated by this section.

✓

Bill

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