

SECOND REGULAR SESSION

# SENATE BILL NO. 927

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time January 17, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6013S.011

## AN ACT

To repeal sections 290.210, 290.230, 290.240, 290.250, 290.262, and 290.330, RSMo, and to enact in lieu thereof seven new sections relating to public contracts.

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

Section A. Sections 290.210, 290.230, 290.240, 290.250, 290.262, and  
2 290.330, RSMo, are repealed and seven new sections enacted in lieu thereof, to  
3 be known as sections 290.210, 290.230, 290.235, 290.240, 290.250, 290.262, and  
4 290.330, to read as follows:

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

3 (1) ["Adjacent county", any Missouri county of the third or fourth  
4 classification having a boundary that, at any point, touches any boundary of the  
5 locality for which the wage rate is being determined;

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

13 [(3)] (2) "Construction" includes construction, reconstruction,  
14 improvement, enlargement, alteration, painting and decorating, or major repair;

15 [(4)] (3) "Department" means the department of labor and industrial  
16 relations;

17 [(5)] (4) "Labor organization" or "union" means any entity which has been

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

18 designated pursuant to the terms of the National Labor Relations Act as the  
19 exclusive bargaining representative of employees of employers engaged in the  
20 construction industry, which entity or affiliated entity has ever had a collective  
21 bargaining agreement which determined an occupational title wage rate;

22        [(6)] (5) "Locality" means the county where the physical work upon public  
23 works is performed;

24        [(7)] (6) "Maintenance work" means the repair, but not the replacement,  
25 of existing facilities when the size, type or extent of the existing facilities is not  
26 thereby changed or increased;

27        [(8)] (7) "Prevailing hourly rate of wages" means the wages paid  
28 generally, in the locality in which the public works is being performed, to  
29 workmen engaged in work of a similar character including the basic hourly rate  
30 of pay and the amount of the rate of contributions irrevocably made to a fund,  
31 plan or program, and the amount of the rate of costs to the contractor or  
32 subcontractor which may be reasonably anticipated in providing benefits to  
33 workmen and mechanics pursuant to an enforceable commitment to carry out a  
34 financially responsible plan or program which was communicated in writing to  
35 the workmen affected, for medical or hospital care, pensions on retirement or  
36 death, compensation for injuries or illness resulting from occupational activity,  
37 or insurance to provide any of the foregoing, for unemployment benefits, life  
38 insurance, disability and sickness insurance, accident insurance, for vacation and  
39 holiday pay, for defraying costs of apprenticeship or other similar programs, or  
40 for other bona fide fringe benefits, but only where the contractor or subcontractor  
41 is not required by other federal or state law to provide any of the benefits;  
42 provided, that the obligation of a contractor or subcontractor to make payment in  
43 accordance with the prevailing wage determinations of the department, insofar  
44 as sections 290.210 to 290.340 are concerned, may be discharged by the making  
45 of payments in cash, by the making of irrevocable contributions by the  
46 assumption of an enforceable commitment to bear the costs of a plan or program  
47 as provided herein, or any combination thereof, where the aggregate of such  
48 payments, contributions and costs is not less than the rate of pay plus the other  
49 amounts as provided herein;

50        [(9)] "Previous six annual wage order reporting periods" means the current  
51 annual wage order reporting period under consideration for wage rate  
52 determinations and the five immediately preceding annual wage order reporting  
53 periods;

54 (10) (8) "Public body" means the state of Missouri or any officer, official,  
55 authority, board or commission of the state, or other political subdivision thereof,  
56 or any institution supported in whole or in part by public funds;

57 [(11)] (9) "Public works" means all fixed works constructed for public use  
58 or benefit or paid for wholly or in part out of public funds. It also includes any  
59 work done directly by any public utility company when performed by it pursuant  
60 to the order of the public service commission or other public authority whether  
61 or not it be done under public supervision or direction or paid for wholly or in  
62 part out of public funds when let to contract by said utility. It does not include  
63 any work done for or by any drainage or levee district;

64 [(12)] (10) "Workmen" means laborers, workmen and mechanics.

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

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

25 3. (1) The provisions of sections 290.210 to 290.340 shall not

26 apply to the construction of public works for which the engineer's  
27 estimate for the total project cost is in the amount of twenty-five  
28 thousand dollars or less for all occupational titles.

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

31 (3) The total project cost shall include the value of work  
32 performed on the project by every person paid by a contractor or  
33 subcontractor for that person's work on the project. The total project  
34 cost shall additionally include all materials and supplies purchased for  
35 the project.

36 4. A public body shall not divide a project into multiple contracts  
37 for the purpose of lowering the total project cost below the threshold  
38 described in subsection 3 of this section. If any project for which the  
39 engineer's estimate for the total project cost is in the amount of twenty-  
40 five thousand dollars or less for all occupational titles subsequently  
41 becomes subject to any change orders that increase the total project  
42 cost so that it exceeds twenty-five thousand dollars, each workman  
43 shall be paid the applicable prevailing wage rate for all work covered  
44 by the original contract as well as for any change orders, as provided  
45 in sections 290.210 to 290.340.

46 5. (1) Notwithstanding any provision of law to the contrary, for  
47 the purposes of construction of public works for which the engineer's  
48 estimate for the total project cost is in the amount of twenty-five  
49 thousand dollars or less for all occupational titles, public bodies shall  
50 be exempt from any law requiring the use of competitive bids.

51 (2) In selecting a contractor for the construction of public works  
52 for which the engineer's estimate for the total project cost is in the  
53 amount of twenty-five thousand dollars or less for all occupational  
54 titles, a public body may require submission of a statement of  
55 qualification that shall include, but not be limited to:

56 (a) Demonstrated ability to perform projects comparable in  
57 design, scope, and complexity;

58 (b) References of owners for whom similar projects have been  
59 performed;

60 (c) Qualifications of personnel who intend to manage the design  
61 and construction aspects of the project; and

62 (d) The names and qualifications of the primary design

63 consultants and the primary contractors with whom the contractor  
64 proposes to subcontract or enter into a joint venture.

65 (3) The contractor shall not replace an identified contractor,  
66 subcontractor, design consultant, or subconsultant without the written  
67 approval of the public body.

68 (4) A public body shall have the discretion to disqualify any  
69 contractor who, in the public body's opinion, lacks the minimum  
70 qualifications required to perform the project.

71 6. Every public body authorized to contract for or construct  
72 public works under sections 290.210 to 290.340 shall comply with the  
73 provisions of sections 34.203 to 34.218.

290.235. 1. Employers may use apprentices and trainees  
2 participating in programs registered with the United States  
3 Department of Labor or certified by the United States Department of  
4 Transportation on public works projects, provided such workers are  
5 paid in accordance with sections 290.210 to 290.340.

6 2. Employers may use entry-level workers for on-the-job training  
7 periods for the purpose of facilitating qualification for or acceptance  
8 into an apprenticeship or training program. The prevailing wage rate  
9 for on-the-job training workers shall be equal to fifty percent of the  
10 prevailing wage rate for a journeyman worker under the appropriate  
11 occupational title for a specific locality.

12 3. The combined total of on-the-job training workers,  
13 apprentices, and trainees shall not exceed a one to one ratio with the  
14 number of journeyman workers in any occupational title on a public  
15 works project subject to sections 290.210 to 290.340.

290.240. 1. The department shall inquire diligently [as to] into  
2 complaints regarding any violation of sections 290.210 to 290.340, shall  
3 institute actions for penalties herein prescribed, and shall enforce generally the  
4 provisions of sections 290.210 to 290.340. Complaints regarding any  
5 violation of sections 290.210 to 290.340 shall be filed with the  
6 department. The following interested parties are the only parties  
7 allowed to file such complaints with the department:

8 (1) Any decision-making public servant for a public body for  
9 which a public works project is being performed, if the complaint is  
10 against the contractor or subcontractor for the project;

11 (2) Any contractor or subcontractor, if the complaint is against

12 **a contractor awarded a contract by a public body; and**

13 **(3) Any workman who alleges a violation of his or her rights**  
14 **under sections 290.210 to 290.340.**

15 2. The department may establish rules and regulations for the purpose of  
16 carrying out the provisions of sections 290.210 to 290.340.

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

32 of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold  
33 from any subcontractor under him **or her** sufficient sums to cover any penalties  
34 withheld from him **or her** by the awarding **public** body on account of said  
35 subcontractor's failure to comply with the terms of sections 290.210 to 290.340,  
36 and if payment has already been made to him **or her**, the contractor may recover  
37 from him **or her** the amount of the penalty in a suit at law.

38         2. In determining whether a violation of sections 290.210 to 290.340 has  
39 occurred, and whether the penalty under subsection 1 of this section shall be  
40 imposed, it shall be the duty of the department to investigate any [claim of  
41 violation] **complaint made by an interested party listed under section**  
42 **290.240**. Upon completing such investigation, the department shall notify the  
43 employer of its findings. If the department concludes that a violation of sections  
44 290.210 to 290.340 has occurred and a penalty may be due, the department shall  
45 notify the employer of such finding by providing a notice of penalty to the  
46 employer. Such penalty shall not be due until forty-five days after the date of the  
47 notice of the penalty.

48         3. The employer shall have the right to dispute such notice of penalty in  
49 writing to the department within forty-five days of the date of the notice. Upon  
50 receipt of this written notice of dispute, the department shall notify the employer  
51 of the right to resolve such dispute through arbitration. The state and the  
52 employer shall submit to an arbitration process to be established by the  
53 department by rule, and in conformance with the guidelines and rules of the  
54 American Arbitration Association or other arbitration process mutually agreed  
55 upon by the employer and the state. If at any time prior to the department  
56 pursuing an enforcement action to enforce the monetary penalty provisions of  
57 subsection 1 of this section against the employer, the employer pays the back  
58 wages as determined by either the department or the arbitrator, the department  
59 shall be precluded from initiating any enforcement action to impose the monetary  
60 penalty provisions of subsection 1 of this section.

61         4. If the employer fails to pay all wages due as determined by the  
62 arbitrator within forty-five days following the conclusion of the arbitration  
63 process, or if the employer fails to exercise the right to seek arbitration, the  
64 department may then pursue an enforcement action to enforce the monetary  
65 penalty provisions of subsection 1 of this section against the employer. If the  
66 court orders payment of the penalties as prescribed in subsection 1 of this section,  
67 the department shall be entitled to recover its actual cost of enforcement from

68 such penalty amount.

69 5. Nothing in this section shall be interpreted as precluding an action for  
70 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 determine the prevailing hourly rate of wages in each  
3 locality for each separate occupational title. In doing so, the department shall  
4 accept and consider information regarding local wage rates that is submitted in  
5 either paper or electronic formats. A final determination applicable to every  
6 locality to be contained in an annual wage order shall be made annually on or  
7 before July first of each year and shall remain in effect until superseded by a new  
8 annual wage order or as otherwise provided in this section. The department  
9 shall, by March tenth of each year, make an initial determination for each  
10 occupational title within the locality.

11 2. The prevailing wage rate for an occupational title in a locality shall,  
12 with the exception of localities that are counties of the third and fourth  
13 classification and any county of the second classification with more than  
14 fifty-eight thousand but fewer than sixty-five thousand inhabitants,] be the wage  
15 rate most commonly paid, as measured by the number of hours worked at each  
16 wage rate, for that occupational title within that locality. [In determining such  
17 prevailing wage rates, the department shall ascertain and consider the applicable  
18 wage rates established by collective bargaining agreements, if any, when no  
19 wages were reported.]

20 3. [With respect only to localities that are counties of the third and fourth  
21 classification and any county of the second classification with more than  
22 fifty-eight thousand but fewer than sixty-five thousand inhabitants,] (1) The  
23 prevailing wage rate for an occupational title within [such] **any** locality shall be  
24 determined in the following manner:

25 [(1) The total number of hours worked that are not paid pursuant to a  
26 collective bargaining agreement for the time period in that occupational title in  
27 the locality and the total number of hours worked that are paid pursuant to a  
28 collective bargaining agreement for the time period in that occupational title in  
29 the locality shall be considered;

30 (2)] (a) If the total number of **reportable** hours that are not paid  
31 pursuant to a collective bargaining agreement, in the aggregate, exceeds the total  
32 number of **reportable** hours that are paid pursuant to such an agreement, in the  
33 aggregate, then the prevailing wage rate shall be the rate most commonly paid



34 that is not paid pursuant to a collective bargaining agreement as measured by the  
35 number of **reportable** hours worked at such rate for that occupational title  
36 within the locality;

37       [(3)] **(b)** If the total number of **reportable** hours that are paid pursuant  
38 to a collective bargaining agreement, in the aggregate, exceeds the total number  
39 of **reportable** hours that are not paid pursuant to such an agreement, in the  
40 aggregate, then the prevailing wage rate shall be the rate most commonly paid  
41 that is paid pursuant to a collective bargaining agreement as measured by the  
42 number of **reportable** hours worked at such rate for that occupational title  
43 within the locality;

44       [(4) If no work within a particular occupational title has been performed  
45 in a locality at any wage rate, the prevailing wage rate for that occupational title  
46 in that locality shall be determined in the following manner:

47       (a) If wages were reported for an occupational title within a locality  
48 within the previous six annual wage order reporting periods and the prevailing  
49 wage rate was determined by a collective bargaining agreement by hours worked  
50 pursuant to such agreement in the most recent annual wage order reporting  
51 period where such wages were reported, then the wage rate paid pursuant to the  
52 current collective bargaining agreement shall be the prevailing rate for that  
53 occupational title within the locality;

54       (b) If wages were reported for an occupational title within a locality  
55 within the previous six annual wage order reporting periods and the prevailing  
56 wage rate was not determined by hours worked pursuant to a collective  
57 bargaining agreement in the most recent annual wage order reporting period  
58 where such wages were reported, then the wage rate paid in the most recent  
59 annual wage order reporting period when such wages were reported shall be the  
60 prevailing wage rate for that occupational title within the locality;

61       (c) If no wages were reported for an occupational title within a locality  
62 within the previous six annual wage order reporting periods, the department  
63 shall examine hours and wages reported in all adjacent Missouri counties during  
64 the same periods. The most recent reported wage rate in a given wage order  
65 period in the adjacent Missouri county with the most reported hours actually  
66 worked for that occupational title in the wage period during the previous six  
67 annual wage order reporting periods shall be used to determine the prevailing  
68 wage rate;

69       (d) If no wages were reported for an occupational title within any adjacent

70 Missouri county within the previous six annual wage order reporting periods,  
71 then the rate paid pursuant to the current collective bargaining agreement shall  
72 be the prevailing wage rate for that occupational title within the locality.]

73 **(c) If the total number of reportable hours that are paid**  
74 **pursuant to a collective bargaining agreement and the total number of**  
75 **reportable hours that are not paid pursuant to a collective bargaining**  
76 **agreement do not equal or exceed, in the aggregate, three hundred**  
77 **hours for an occupational title within a locality there shall be no**  
78 **prevailing wage rate for that wage order;**

79 **(2) For purposes of this subsection, the term "reportable hours"**  
80 **shall mean hours reported by a contractor for work performed by such**  
81 **contractor in a particular occupational title within a particular**  
82 **locality.**

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

87 5. At any time within thirty days after the certified copies of the  
88 determinations have been filed with the secretary of state and the department,  
89 any person who is affected thereby may object in writing to a determination or a  
90 part thereof that he **or she** deems objectionable by filing a written notice with  
91 the department, stating the specific grounds of the objection. If no objection is  
92 filed, the determination is final after thirty days.

93 6. After the receipt of the objection, the department shall set a date for  
94 a hearing on the objection. The date for the hearing shall be within sixty days  
95 of the receipt of the objection. Written notice of the time and place of the hearing  
96 shall be given to the objectors at least ten days prior to the date set for the  
97 hearing.

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

105 8. Within twenty days of the conclusion of the hearing, the department

106 shall rule on the written objection and make the final determination that it  
107 believes the evidence warrants. Immediately, the department shall file a certified  
108 copy of its final determination with the secretary of state and with the  
109 department and shall serve a copy of the final determination on all parties to the  
110 proceedings by personal service or by registered mail.

111 9. This final decision of the department of the prevailing **hourly rate of**  
112 wages in the locality for each occupational title is subject to review in accordance  
113 with the provisions of chapter 536. Any person affected, whether or not the  
114 person participated in the proceedings resulting in the final determination, may  
115 have the decision of the department reviewed. The filing of the final  
116 determination with the secretary of state shall be considered a service of the final  
117 determination on persons not participating in the administrative proceedings  
118 resulting in the final determination.

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

122 11. Any annual wage order made for a particular occupational title in a  
123 locality, that is based on the number of hours worked under a collective  
124 bargaining agreement, may be altered once each year, as provided in this  
125 subsection. The prevailing wage for each such occupational title may be adjusted  
126 on the anniversary date of any collective bargaining agreement which covers all  
127 persons in that particular occupational title in the locality in accordance with any  
128 annual incremental wage increases set in the collective bargaining agreement. If  
129 the prevailing wage for an occupational title is adjusted pursuant to this  
130 subsection, the employee's representative or employer in regard to such collective  
131 bargaining agreement shall notify the department of this adjustment, including  
132 the effective date of the adjustment. The adjusted prevailing wage shall be in  
133 effect until the next final annual wage order is issued pursuant to this  
134 section. The wage rates for any particular job, contracted and commenced within  
135 sixty days of the contract date, which were set as a result of the annual or revised  
136 wage order, shall remain in effect for the duration of that particular job.

137 12. In addition to all other reporting requirements of sections 290.210 to  
138 290.340, each public body which is awarding a contract for a public works project  
139 shall, prior to beginning of any work on such public works project, notify the  
140 department, on a form prescribed by the department, of the scope of the work to  
141 be done, the various types of craftsmen who will be needed on the project, and the

142 date work will commence on the project.

290.330. The department after investigation, upon complaint **made by**  
2 **an interested party listed under section 290.240** or upon its own initiative,  
3 shall file with the secretary of state a list of the contractors and subcontractors  
4 who it finds have been prosecuted and convicted for violations of sections 290.210  
5 to 290.340 and such contractor or subcontractor, or simulations thereof, shall be  
6 prohibited from contracting directly or indirectly with any public body for the  
7 construction of any public works or from performing any work on the same as a  
8 contractor or subcontractor for a period of one year from the date of the first  
9 conviction for such violation and for a period of three years from the date of each  
10 subsequent violation and conviction thereof. No public body shall award a  
11 contract for a public works to any contractor or subcontractor, or simulation  
12 thereof, during the time that its name appears on said list. The filing of the  
13 notice of conviction with the secretary of state shall be notice to all public bodies  
14 and their officers, officials, members, agents and representatives.

✓  
Bill

Copy