

FIRST REGULAR SESSION

HOUSE BILL NO. 828

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RUESTMAN (Sponsor) AND HUNTER (Co-sponsor).

Read 1st time March 17, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1563L.011

AN ACT

To amend chapter 290, RSMo, by adding thereto ten new sections relating to the prevailing wage, with penalty provisions.

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

Section A. Chapter 290, RSMo, is amended by adding thereto ten new sections, to be
2 known as sections 290.162, 290.164, 290.166, 290.168, 290.170, 290.172, 290.174, 290.176,
3 290.180, and 290.342, to read as follows:

**290.162. As used in sections 290.162 to 290.180, and sections 290.240, 290.263 to
2 290.280, and 290.300 to 290.340, when applied to any county listed in section 290.180,
3 unless the context indicates otherwise, the following terms mean:**

4 (1) "Construction", for-profit activities done by laborers, workers or mechanics
5 on public works involving the carrying out of any building, clearing, filling, excavation, or
6 substantial enlargement or improvement in the size or use of any structure or the
7 appearance of any land, but not including decorating, maintenance, replacement, or
8 repairs. When appropriate to the context, construction refers to the act of construction or
9 the result of construction;

10 (2) "Department", the department of labor and industrial relations;

11 (3) "Interested party", any agent or officer of the contracting public body or any
12 employee of a contractor or subcontractor subject to the public works contract;

13 (4) "Locality", the county where the physical work upon public works is
14 performed, except that with respect to contracts with the state highways and
15 transportation commission, locality may be construed to include two or more adjacent

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 counties from which workers may be accessible for work on such construction;

17 (5) "Maintenance work", the repair or replacement, of existing facilities
18 components when the size, type, or intended use of the existing facilities is not thereby
19 changed or increased;

20 (6) "Prevailing hourly rate of wages", the average wages paid generally, in the
21 locality in which the public works is being performed, to workers engaged in work of a
22 similar character including the basic hourly rate of pay and the amount of the rate of
23 contributions irrevocably made by a contractor or subcontractor to a trustee or to a third
24 person under a fund, plan or program, and the amount of the rate of costs to the contractor
25 or subcontractor which may be reasonably anticipated in providing benefits to workers
26 and mechanics under an enforceable commitment to carry out a financially responsible
27 plan or program which was communicated in writing to the workers affected, for medical
28 or hospital care, pensions on retirement or death, compensation for injuries or illness
29 resulting from occupational activity, or insurance to provide any of the foregoing, for
30 unemployment benefits, life insurance, disability and sickness insurance, accident
31 insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other
32 similar programs, or for other bona fide fringe benefits, but only where the contractor or
33 subcontractor 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 as sections
36 290.162 to 290.180, and sections 290.240, 290.263 to 290.280, and 290.300 to 290.340, when
37 applied to any county listed in section 290.180, are concerned, may be discharged by the
38 making of payments in cash, by the making of irrevocable contributions to trustees or third
39 persons as provided herein, by the assumption of an enforceable commitment to bear the
40 costs of a plan or program as provided herein, or any combination thereof, where the
41 aggregate of such payments, contributions and costs is not less than the rate of pay plus the
42 other amounts as provided herein;

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

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

52 district or any project with a total cost of less than one hundred fifty thousand dollars;

53 (9) "Workers", laborers, workmen or women, and mechanics.

290.164. It is hereby declared to be the policy of the state of Missouri that a wage
2 of no less than the prevailing hourly rate of wages for work of a similar character in the
3 locality in which the work is performed shall be paid to all workers employed by or on
4 behalf of any public body engaged in public works, but not including maintenance work
5 or repairs, or work done under section 290.260.

290.166. 1. Not less than the prevailing hourly rate of wages for work of a similar
2 character in the locality in which the work is performed, and not less than the prevailing
3 hourly rate of wages for legal holiday and overtime work, shall be paid to all workers
4 employed by or on behalf of any public body engaged in the actual construction of public
5 works, but not including maintenance work or repairs, work done under section 290.260.
6 Only such workers 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 to be
8 employed upon public works.

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

290.168. Every public body authorized to contract for or construct public works,
2 before advertising for bids or undertaking such construction shall request the department
3 to determine the prevailing rates of wages for workers for the class or type of work called
4 for by the public works, in the locality where the work is to be performed. The department
5 shall determine the prevailing hourly rate of wages in the locality in which the work is to
6 be performed for each type of worker required to execute the contemplated contract and
7 such determination or schedule of the prevailing hourly rate of wages by occupational title
8 as claimed by each union which shall be attached to and made a part of the specifications
9 for the work. Where no wages are reported for a particular locality the hourly wage rate
10 shall be one and one-half times the most recent average hourly wage rate for the locality
11 as published on or before March tenth of each year by the Missouri economic research and
12 information center, Missouri department of economic development or its successor. The
13 public body shall then specify in the resolution or ordinance and in the call for bids for the
14 contract, what is the prevailing hourly rate of wages in the locality for each type of worker
15 needed to execute the contract and also the general prevailing rate for legal holiday and
16 overtime work, and shall include such rates in the advertising of such bids. It shall be
17 mandatory upon the contractor to whom the contract is awarded and upon any
18 subcontractor under him or her, to pay not less than the specified rates to all workers

19 employed by them in the execution of the contract. The public body awarding the contract
20 shall cause to be inserted in the contract a stipulation to the effect that not less than the
21 prevailing hourly rate of wages shall be paid to all workers performing work under the
22 contract. It shall also require in all contractor's bonds that the contractor include such
23 provisions as will guarantee the faithful performance of the prevailing hourly wage clause
24 as provided by contract. The contractor shall forfeit as a penalty to the state, county, city
25 and county, city, town, district or other political subdivision on whose behalf the contract
26 is made or awarded ten dollars for each worker employed, for each calendar day, or
27 portion thereof, such worker is paid less than the said stipulated rates for any work done
28 under said contract, by him or her or by any subcontractor under him or her, and the said
29 public body awarding the contract shall cause to be inserted in the contract a stipulation
30 to this effect. An interested party may report an alleged violation of the provisions of
31 sections 290.162 to 290.180 and sections 290.240, 290.263 to 290.280, and 290.300 to
32 290.340, when applied to any county listed in section 290.180, to the contracting public
33 body, and it shall be the duty of such public body awarding the contract, and its agents and
34 officers, to take cognizance of all complaints of any violation of the provisions of sections
35 290.162 to 290.180 and sections 290.240, 290.263 to 290.280, and 290.300 to 290.340, when
36 applied to any county listed in section 290.180, committed in the course of the execution of
37 the contract and, to report the alleged violation to the department, which shall investigate
38 the complaint and either confirm the violation or dismiss the complaint. Upon
39 confirmation of a violation by the department, the contracting public body, when making
40 payments to the contractor becoming due under said contract, shall withhold and retain
41 therefrom only such sums and amounts due and owing as a result of any confirmed
42 violation of sections 290.162 to 290.180 and sections 290.240, 290.263 to 290.280, and
43 290.300 to 290.340, when applied to any county listed in section 290.180. It shall be lawful
44 for any contractor to withhold from any subcontractor under him or her sufficient sums
45 to cover any penalties withheld from him or her by the awarding body on account of said
46 subcontractor's failure to comply with the terms of sections 290.162 to 290.180 and sections
47 290.240, 290.263 to 290.280, and 290.300 to 290.340, when applied to any county listed in
48 section 290.180, and if payment has already been made to him or her, the contractor may
49 recover from him or her the amount of the penalty in a suit at law.

290.170. 1. The department, as it deems necessary, shall from time to time
2 investigate and determine the prevailing hourly rate of wages in the localities. A
3 determination applicable to every locality to be contained in a general wage order shall be
4 made annually on or before July first of each year for the Missouri state highways and
5 transportation commission and shall remain in effect until superseded by a new general

6 wage order. In determining prevailing rates, the department shall ascertain and consider
7 the applicable wage rates established by collective bargaining agreements, if any, and the
8 average rates that are paid generally within the locality.

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

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

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

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

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

32 7. This final decision of the department of the prevailing wages in the locality is
33 subject to review in accordance with the provisions of chapter 536, RSMo. Any person
34 affected, whether or not the person participated in the proceedings resulting in the final
35 determination, may have the decision of the department reviewed. The filing of the final
36 determination with the secretary of state shall be considered a service of the final
37 determination on persons not participating in the administrative proceedings resulting in
38 the final determination.

39 8. At any time before trial any person affected by the final determination of the
40 department may intervene in the proceedings to review under chapter 536, RSMo, and be
41 made a party to the proceedings.

42 **9. All proceedings in any court affecting a determination of the department under**
43 **the provisions of sections 290.162 to 290.180 and sections 290.240, 290.263 to 290.280, and**
44 **290.300 to 290.340, when applied to any county listed in section 290.180, shall have priority**
45 **in hearing and determination over all other civil proceedings pending in the court, except**
46 **election contests.**

290.172. 1. Except as otherwise provided in section 290.260, the department shall
2 **annually investigate and determine the prevailing hourly rate of wages in each locality for**
3 **each separate occupational title. A final determination applicable to every locality to be**
4 **contained in an annual wage order shall be made annually on or before July first of each**
5 **year and shall remain in effect until superseded by a new annual wage order or as**
6 **otherwise provided in this section. In determining prevailing rates, the department shall**
7 **ascertain the rates that are paid generally within the locality, and shall, by March tenth of**
8 **each year, make an initial determination for each occupational title within the locality.**

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

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

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

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

27 **6. Within twenty days of the conclusion of the hearing, the department shall rule**
28 **on the written objection and make the final determination that it believes the evidence**
29 **warrants. Immediately, the department shall file a certified copy of its final determination**
30 **with the secretary of state and with the department and shall serve a copy of the final**
31 **determination on all parties to the proceedings by personal service or by registered mail.**

32 **7. This final decision of the department of the prevailing wages in the locality for**
33 **each occupational title is subject to review in accordance with the provisions of chapter**
34 **536, RSMo. Any person affected, whether or not the person participated in the**
35 **proceedings resulting in the final determination, may have the decision of the department**
36 **reviewed. The filing of the final determination with the secretary of state shall be**
37 **considered a service of the final determination on persons not participating in the**
38 **administrative proceedings resulting in the final determination.**

39 **8. At any time before trial any person affected by the final determination of the**
40 **department may intervene in the proceedings to review under chapter 536, RSMo, and be**
41 **made a party to the proceedings.**

42 **9. Any annual wage order made for a particular occupational title in a locality may**
43 **be altered once each year. The wage rates for any particular job, contracted and**
44 **commenced within sixty days of the contract date, which were set as a result of the annual**
45 **or revised wage order, shall remain in effect for the duration of that particular job.**

46 **10. In addition to all other reporting requirements of sections 290.162 to 290.180**
47 **and sections 290.240, 290.263 to 290.280, and 290.300 to 290.340, when applied to any**
48 **county listed in section 290.180, each public body which is awarding a contract for a public**
49 **works project shall, prior to beginning of any work on such public works project, notify**
50 **the department, on a form prescribed by the department, of the scope of the work to be**
51 **done, the various types of craftspeople who will be needed on the project, and the date**
52 **work will commence on the project.**

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

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

290.176. Any officer, official, member, agent, or representative of any public body,

2 contractor or subcontractor who willfully violates any of the provisions and requirements
3 of sections 290.162 to 290.180, and sections 290.240 and 290.263 to 290.280 and 290.300 to
4 290.340 when applied to any county listed in section 290.180 shall be punished for each
5 violation thereof by a fine not exceeding five hundred dollars, or by imprisonment not
6 exceeding six months, or by both such fine and imprisonment. Each day such willful
7 violation continues shall constitute a separate offense as contemplated by this section.

290.180. Sections 290.162 to 290.180 shall apply only to any county of the third or
2 fourth classification, any county of the first classification with more than one hundred four
3 thousand six hundred but fewer than one hundred four thousand seven hundred
4 inhabitants, any county of the second classification with more than fifty-two thousand six
5 hundred but fewer than fifty-two thousand seven hundred inhabitants, any county of the
6 second classification with more than thirty-nine thousand four hundred but fewer than
7 thirty-nine thousand five hundred inhabitants, or any county of the first classification with
8 more than thirty-nine thousand seven hundred but fewer than thirty-nine thousand eight
9 hundred inhabitants.

290.342. Sections 290.210, 290.220, 290.230, 290.250, 290.260, 290.262, and 290.290
2 shall not apply to any county of the third or fourth classification, any county of the first
3 classification with more than one hundred four thousand six hundred but fewer than one
4 hundred four thousand seven hundred inhabitants, any county of the second classification
5 with more than fifty-two thousand six hundred but fewer than fifty-two thousand seven
6 hundred inhabitants, any county of the second classification with more than thirty-nine
7 thousand four hundred but fewer than thirty-nine thousand five hundred inhabitants, or
8 any county of the first classification with more than thirty-nine thousand seven hundred
9 but fewer than thirty-nine thousand eight hundred inhabitants.