

SECOND REGULAR SESSION

HOUSE BILL NO. 1498

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DETHROW (Sponsor), RUESTMAN, KELLY,
FISHER AND HUNTER (Co-sponsors).

Read 1st time January 24, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4448L.01I

AN ACT

To repeal sections 290.290 and 290.305, 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Section A. Sections 290.290 and 290.305, RSMo, are repealed and eight new sections
2 enacted in lieu thereof, to be known as sections 34.203, 34.206, 34.209, 34.212, 34.215, 290.290,
3 290.305, and 290.326, to read as follows:

**34.203. The provisions of sections 34.203 to 34.215 shall be known and may be cited
2 as the "Fairness in Public Construction Act".**

**34.206. The purpose of sections 34.203 to 34.215 is to fulfill the state's proprietary
2 objectives in maintaining and promoting the economical, nondiscriminatory, and efficient
3 expenditures of public funds in connection with publicly funded or assisted construction
4 projects.**

**34.209. Any state or political subdivision, agency, or instrumentality thereof, when
2 engaged in procuring products or services or letting contracts for manufacture of public
3 works, or overseeing such procurement, construction, or manufacture, shall ensure that
4 bid specification, project agreements, and other controlling documents entered into,
5 required, or subject to approval by the subdivision, agency, or instrumentality do not:**

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.

6 (1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter
7 into or adhere to agreements with one or more labor organizations on the same or related
8 projects;

9 (2) Discriminate against bidders, offerors, contractors, or subcontractors for
10 entering or refusing to become or remain signatories or otherwise adhere to agreements
11 with one or more labor organizations on the same or related construction projects;

12 (3) Require or prohibit any bidder, offeror, contractor, or subcontractor to enter
13 into, adhere to, or enforce any agreement that requires its employees, as a condition of
14 employment, to:

15 (a) Become members of or affiliated with a labor organization; or

16 (b) Pay dues or fees to a labor organization, over an employee's objection, in excess
17 of the employee's share of labor organization costs relating to collective bargaining,
18 contract administration, or grievance adjustment.

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20 Nothing in sections 34.203 to 34.215 shall prohibit employers or other parties covered by
21 the National Labor Relations Act from entering into agreements or engaging in any other
22 activity arguably protected by law, nor shall any aspect of sections 34.203 to 34.215 be
23 interpreted in such a way as to interfere with the labor relations of parties covered by the
24 National Labor Relations Act.

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

6 2. The state, any political subdivision of the state, or any agency or instrumentality
7 thereof shall exercise such authority as may be required to preclude a grant recipient or
8 party to a cooperative agreement from imposing any of the elements specified in section
9 34.209 in connection with any grant or cooperative agreement awarded or entered into.
10 Nothing in sections 34.203 to 34.215 shall prohibit contractors or subcontractors from
11 voluntarily entering into agreements described in section 34.209.

34.215. Any interested party, including a bidder, offeror, contractor, subcontractor,
2 or taxpayer, shall have standing to challenge any bid specification, project agreement,
3 controlling document, grant, or cooperative agreement, which violates the provisions of
4 sections 34.203 to 34.215, and shall be awarded court costs and attorney's fees if the
5 challenge prevails.

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

2. **Except on public projects built under the general wage order, section 290.260, or heavy construction work under the annual wage order, not including the construction of water or sewer lines,** each contractor and subcontractor shall file with the contracting public body upon completion of the public work and prior to final payment therefor an affidavit stating that he had fully complied with the provisions and requirements of this chapter[,] and **that he had paid all covered employees the prevailing rates specified for the public work, without benefit of a wage subsidy, bid supplement, or rebate received, directly or indirectly from another project, from employees, labor organizations, or any other third party on the project for which the affidavit is signed.** No public body shall be authorized to make final payment until such affidavit is filed therewith in proper form and order.

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

4. The provisions of subsection 3 of this section shall not apply to construction of public works for which the contract awarded is in the amount of two hundred fifty thousand dollars or less.

290.305. 1. No person, firm or corporation shall violate the wage provisions of any contract contemplated in sections 290.210 to 290.340 or suffer or require any employee to work for less than the rate of wages so fixed, or violate any of the provisions contained in sections 290.210 to 290.340. Where workmen are employed and their rate of wages has been determined as provided in sections 290.210 to 290.340, no person, either for himself or any other person, shall request, demand or receive, either before or after such workman is engaged, that such workman pay back, return, donate, contribute, or give any part or all of said workman's wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such workman from procuring or retaining employment, and no person shall, directly or indirectly, pay, request or authorize any other person to violate this section. This section does not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

2. Except on public projects built under the general wage order, section 290.260, or heavy construction work under the annual wage order, not including the construction of water or sewer lines, it shall be unlawful for any employer to receive, directly or indirectly from another project, any wage subsidies, bid supplements, or rebates from any employees or labor organization for such construction project or from any third party, in whole or in part, to subsidize labor costs on the construction project.

290.326. No public body, officer, official, member, agent, or representative authorized to contract for public works shall award a contract for the construction of an improvement or disburse any funds on account of the construction of a public improvement unless such public body first has received, from the contractor or subcontractor who will perform the work, an affidavit stating that he will not participate, either directly or indirectly, in any job targeting programs, bid supplement programs, market recovery programs, or any other program or device providing wage subsidies, bid supplements, or rebates that would subsidize the labor costs on the project covered under subsection 2 of section 290.305. Any contractor or subcontractor who submits a false affidavit as required shall be in violation of this section. Any contractor or subcontractor who is found to be in violation of this section shall pay to the public body twice the amount of the subsidy received.

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