

FIRST REGULAR SESSION

HOUSE BILL NO. 369

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FISHER (Sponsor), HUNTER, STEVENSON,
CUNNINGHAM (145), DENISON, DETHROW, WELLS, EMERY, PARSON AND WOOD (Co-sponsors).

Read 1st time January 11, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1000L.02I

AN ACT

To amend chapters 34 and 290, RSMo, by adding thereto seven new sections relating to public contracts.

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

Section A. Chapters 34 and 290, RSMo, are amended by adding thereto seven new
2 sections, to be known as sections 34.203, 34.206, 34.209, 34.212, 34.216, 290.095, and 290.097,
3 to read as follows:

**34.203. The provisions of sections 34.203 to 34.216 shall be known and may be cited
2 as the "Fairness in Public Construction Act".**

**34.206. The purpose of sections 34.203 to 34.216 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. Nothing in sections 34.203 to 34.216 shall prohibit employers or other parties
5 covered by the National Labor Relations Act from entering into agreements or engaging
6 in any other activity arguably protected by law, nor shall any aspect of sections 34.203 to
7 34.216 be interpreted in such a way as to interfere with the labor relations of parties
8 covered by the National Labor Relations Act.**

**34.209. The state, any agency of the state, or any instrumentality thereof, when
2 engaged in procuring or letting contracts for construction of a project that is funded by
3 greater than fifty percent of state funds, shall ensure that bid specification, project**

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.

4 agreements, and other controlling documents entered into, required, or subject to approval
5 by the state, agency, or instrumentality do not:

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; or

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

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

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

34.216. 1. For purposes of this section, the term "project labor agreement" shall
2 be defined as a multi-employer, multi-union pre-hire agreement designed to systemize
3 labor relations at a construction site that is required by the state or a political subdivision
4 of the state as a condition of a bid specification for a construction project, thereby insuring
5 that all contractors and subcontractors on a project comply with the terms of a union-only
6 project labor agreement.

7 2. For any contracts for construction of a project that is funded by less than fifty
8 percent from state funds, the state or a political subdivision of the state may enter into a
9 union-only project labor agreement for the procurement of construction services on a
10 project-by-project basis only on the condition that:

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

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

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

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

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

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

26 (3) No fewer than fourteen days but no more than thirty days following publication
27 of the notice of a public hearing, the state or political subdivision shall conduct a public
28 hearing on whether to proceed with its intent to require a union-only project labor
29 agreement;

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

33 3. (1) Any interested party may, within thirty days of the determination of the state
34 or political subdivision as set forth in subdivision (4) of subsection 2 of this section, appeal
35 to the labor and industrial relations commission for a determination as to whether the state
36 or political subdivision complied with subsection 2 of this section for a union-only project
37 labor agreement as defined in subsection 1 of this section.

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

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

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

290.095. 1. No contractor or subcontractor may directly or indirectly receive a
2 wage subsidy, bid supplement, or rebate for employment on a public works project if such
3 wage subsidy, bid supplement, or rebate has the effect of reducing the wage rate paid by
4 the employer on a given occupational title below the prevailing wage rate as provided in
5 section 290.262.

6 2. In the event a wage subsidy, bid supplement, or rebate is lawfully provided or
7 received under subsection 1 of this section, the entity providing and the entity receiving

8 such subsidy, supplement, or rebate shall report the date and amount of such subsidy,
9 supplement, or rebate to the public body within thirty days of receipt of payment. This
10 disclosure report shall be a public record under chapter 610, RSMo.

11 3. The provisions of this section shall not apply if the provisions are in conflict with
12 the National Labor Relations Act.

290.097. 1. Any interested person, employee, or an aggrieved contractor or
2 subcontractor may allege a violation of subsection 1 of section 290.095.

3 2. If the division of labor standards determines that a violation of subsection 1 of
4 section 290.095 has occurred, the division shall assess and collect a penalty on behalf of the
5 public body. In determining the dollar amount owed to the public body, the division shall
6 calculate double the dollar amount per hour that the wage subsidy, bid supplement or
7 rebate has reduced the wage rate paid by the employer below the prevailing wage rate as
8 provided in section 290.262 for each hour that work was performed.

9 3. If the division finds that the complaint filed under this section is frivolous and
10 utterly without merit, or exhibits a pattern of harassing conduct on the part of the filing
11 party, the commission may estop the filing party from filing further complaints against the
12 charged party for a period of up to one year.

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