

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 369
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Workforce Development and Workplace Safety February 7, 2007 with recommendation that House Committee Substitute for House Bill No. 369 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1000L.04C

AN ACT

To repeal section 290.250, 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Section A. Section 290.250, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 34.203, 34.206, 34.209, 34.212, 34.216, 290.095, 290.250, and 1, to read as follows:

34.203. The provisions of sections 34.203 to 34.216 shall be known and may be cited 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 objectives in maintaining and promoting the economical, nondiscriminatory, and efficient expenditures of public funds in connection with publicly funded or assisted construction projects. Nothing in sections 34.203 to 34.216 shall prohibit employers or other parties covered by the National Labor Relations Act from entering into agreements or engaging in any other activity arguably protected by law, nor shall any aspect of sections 34.203 to 34.216 be interpreted in such a way as to interfere with the labor relations of parties covered by the National Labor Relations Act.

34.209. The state, any agency of the state, or any instrumentality thereof, when engaged in procuring or letting contracts for construction of a project that is funded by 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 agreement.

7 2. The state or a political subdivision of the state may enter into a union-only
8 project labor agreement for the procurement of construction services, except as provided
9 in section 34.209, on a project-by-project basis only if the project is funded fifty percent
10 or less with state funds and 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 not more than thirty days following
27 publication of the notice of a public hearing, the state or political subdivision shall conduct
28 a public 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 section 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 this subsection or subsection 1 of this section, the entity receiving such

8 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 matter of public record under chapter 610, RSMo.

11 **3. Any employer in violation of this section shall owe to the public body double the**
12 **dollar amount per hour that the wage subsidy, bid supplement, or rebate has reduced the**
13 **wage rate paid by the employer below the prevailing wage rate as provided in section**
14 **290.262 for each hour that work was performed. It shall be the duty of the department to**
15 **calculate the dollar amount owed to the public body under this section.**

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

29 any subcontractor under him sufficient sums to cover any penalties withheld from him by the
30 awarding body on account of said subcontractor's failure to comply with the terms of sections
31 290.210 to 290.340, and if payment has already been made to him, the contractor may recover
32 from him the amount of the penalty in a suit at law.

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

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

53 **4. If the employer fails to pay all wages due as determined by the arbitrator within**
54 **forty-five days following the conclusion of the arbitration process, or if the employer fails**
55 **to exercise the right to seek arbitration, the department may then pursue an enforcement**
56 **action to enforce the monetary penalty provisions of subsection 1 of this section against the**
57 **employer. If the court orders payment of the penalties as prescribed in subsection 1 of this**
58 **section, the department shall be entitled to recover its actual cost of enforcement from such**
59 **penalty amount.**

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

Section 1. Notwithstanding the provisions of section 1.140, RSMo, the provisions
2 **of sections 290.095 and 290.250, RSMo, and sections 34.203 to 34.216, RSMo, of this act**

3 shall not be severable. In the event a court of competent jurisdiction rules that any part
4 of this act is unenforceable, the entire act shall be rendered null and void.

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