

SECOND REGULAR SESSION

# HOUSE BILL NO. 2399

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LEMBKE (Sponsor), HUBBARD, YOUNG, WASSON, AVERY,  
SUTHERLAND, DUSENBERG, DOUGHERTY AND TILLEY (Co-sponsors).

Read 1st time March 11, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5305L.01I

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### AN ACT

To amend chapter 292, RSMo, by adding thereto one new section relating to occupational safety and health administration training requirements for certain employees, with penalty provisions and an effective date.

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

Section A. Chapter 292, RSMo, is amended by adding thereto one new section, to be  
2 known as section 292.675, to read as follows:

**292.675. 1. As used in this section, the following terms shall mean:**

- 2       **(1) "Construction", construction, reconstruction, improvement, enlargement,**  
3 **alteration, demolition, painting and decorating, or major repair;**  
4       **(2) "Department", the department of labor and industrial relations;**  
5       **(3) "Person", any natural person, joint venture, partnership, corporation, or other**  
6 **business or legal entity;**  
7       **(4) "Public body", the state of Missouri or any officer, official, authority, board or**  
8 **commission of the state, or other political subdivision thereof, or any institution supported**  
9 **in whole or in part by public funds;**  
10       **(5) "Public works", all fixed works constructed for public use or benefit or paid for**  
11 **wholly or in part out of public funds. "Public works" includes any work done directly by**  
12 **any public utility company when performed by it pursuant to the order of the public**  
13 **service commission or other public authority whether or not it be done under public**

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.

14 supervision or direction or paid for wholly or in part out of public funds when let to  
15 contract by said utility.

16       **2. Any person signing a contract to work on the construction of public works for**  
17 **any public body shall provide a ten-hour Occupational Safety and Health Administration**  
18 **(OSHA) construction safety program for their on-site employees which includes a course**  
19 **in construction safety and health approved by the United States Occupational Safety and**  
20 **Health Administration. All employees are required to complete the program prior to**  
21 **beginning work on such construction project.**

22       **3. Any employee found on a worksite subject to this section without documentation**  
23 **of the successful completion of the course required under subsection 2 of this section shall**  
24 **be subject to immediate removal.**

25       **4. The public body shall specify in the resolution or ordinance and in the call for**  
26 **bids for the contract, the requirements of this section. The contractor to whom the**  
27 **contract is awarded and any subcontractor under such contractor shall require all on-site**  
28 **employees to complete the ten-hour OSHA training program. The public body awarding**  
29 **the contract shall include this requirement in the contract. The contractor shall forfeit as**  
30 **a penalty to the public body on whose behalf the contract is made or awarded, two**  
31 **thousand five hundred dollars plus one hundred dollars for each employee employed by**  
32 **the contractor or subcontractor, for each calendar day, or portion thereof, such employee**  
33 **is employed without the required ten-hour OSHA training. The public body awarding the**  
34 **contract shall include notice of these penalties in the contract. The public body awarding**  
35 **the contract shall withhold and retain therefrom, all sums and amounts due and owing as**  
36 **a result of any violation of this section when making payments to the contractor under the**  
37 **contract. The contractor may withhold from any subcontractor, sufficient sums to cover**  
38 **any penalties the public body has withheld from the contractor resulting from the**  
39 **subcontractor's failure to comply with the terms of this section. If payment has been made**  
40 **to the subcontractor without withholding, the contractor may recover the amount of the**  
41 **penalty resulting from the fault of the subcontractor in an action maintained in the circuit**  
42 **court in the county in which the public works project is located from the subcontractor.**

43       **5. In determining whether a violation of this section has occurred, and whether the**  
44 **penalty under subsection 4 of this section shall be imposed, the department shall investigate**  
45 **any claim of violation. Upon completing such investigation, the department shall notify the**  
46 **public body and any party found to be in violation of this section of its findings and**  
47 **whether a penalty shall be assessed. Determinations under this section may be appealed**  
48 **in the circuit court in the county in which the public works project is located.**

49           **6. If the contractor or subcontractor fails to pay the penalty within forty-five days**  
50 **following notification by the department, the department shall pursue an enforcement**  
51 **action to enforce the monetary penalty provisions of subsection 4 of this section against the**  
52 **contractor or subcontractor found to be in violation of this section. If the court orders**  
53 **payment of the penalties as prescribed under subsection 4 of this section, the department**  
54 **shall be entitled to recover its actual cost of enforcement in addition to such penalty**  
55 **amount.**

56           **7. The department may establish rules and regulations for the purpose of**  
57 **implementing the provisions of this section. Any rule or portion of a rule, as that term is**  
58 **defined in section 536.010, RSMo, that is created under the authority delegated in this**  
59 **section shall become effective only if it complies with and is subject to all of the provisions**  
60 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter**  
61 **536, RSMo, are nonseverable and if any of the powers vested with the general assembly**  
62 **pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and**  
63 **annul a rule are subsequently held unconstitutional, then the grant of rulemaking**  
64 **authority and any rule proposed or adopted after August 28, 2008, shall be invalid and**  
65 **void.**

Section B. Section A of this act shall become effective on August 28, 2009.

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