

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 126

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE VESCOVO.

0529H.02P

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 34.203, 34.206, 34.209, 34.212, 34.216, and 34.217, RSMo, and to enact in lieu thereof six new sections relating to public contracts.

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

Section A. Sections 34.203, 34.206, 34.209, 34.212, 34.216, and 34.217, RSMo, are  
2 repealed and six new sections enacted in lieu thereof, to be known as sections 34.203, 34.206,  
3 34.209, 34.212, 34.217, and 34.218, to read as follows:

34.203. The provisions of sections 34.203 to ~~[34.216]~~ **34.218** shall be known and may  
2 be cited as the "Fairness in Public Construction Act".

34.206. The purpose of sections 34.203 to ~~[34.216]~~ **34.218** is to fulfill the state's  
2 proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and  
3 efficient expenditures of public funds in connection with publicly funded or assisted construction  
4 projects. Nothing in sections 34.203 to ~~[34.216]~~ **34.218** shall prohibit employers or other parties  
5 covered by the National Labor Relations Act from entering into agreements or engaging in any  
6 other activity arguably protected by law, nor shall any aspect of sections 34.203 to ~~[34.216]~~  
7 **34.218** be interpreted in such a way as to interfere with the labor relations of parties covered by  
8 the National Labor Relations Act.

34.209. The state, any agency of the state, **any political subdivision of the state**, or any  
2 instrumentality thereof, when engaged in procuring or letting contracts for construction ~~[of a~~  
3 ~~project that is funded by greater than fifty percent of state funds]~~, **repair, remodeling, or**  
4 **demolition of a facility** shall ensure that bid specification, project agreements, and other

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.

5 controlling documents entered into, required, or subject to approval by the state, agency, **political**  
6 **subdivision**, or instrumentality do not:

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

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

12 (3) **Encourage or give preferential treatment to bidders, offerors, contractors, or**  
13 **subcontractors for entering or refusing to enter or to remain signatory or otherwise adhere**  
14 **to agreements with one or more labor organizations on the same or related construction**  
15 **projects.**

34.212. 1. The state, any agency of the state, **any political subdivision of the state**, or  
2 any instrumentality thereof shall not issue **or award grants, tax abatements, or tax credits** or  
3 enter into cooperative agreements for construction projects **or for the improvement,**  
4 **maintenance, or renovation of real property or fixtures**, a condition of which requires that  
5 bid specifications, project agreements, or other controlling documents pertaining to the grant, **tax**  
6 **abatement, tax credit**, or cooperative agreement contain any of the elements specified in section  
7 34.209.

8 2. The state, any agency of the state, **any political subdivision**, or any instrumentality  
9 thereof shall exercise such authority as may be required to preclude a grant, **tax abatement, or**  
10 **tax credit** recipient or party to a cooperative agreement from imposing any of the elements  
11 specified in section 34.209 in connection with any grant or cooperative agreement awarded or  
12 entered into. Nothing in sections 34.203 to ~~[34.216]~~ **34.218** shall prohibit contractors or  
13 subcontractors from voluntarily entering into agreements described in section 34.209.

34.217. Notwithstanding the provisions of section 1.140, the provisions of sections  
2 290.095 and 290.250 and sections 34.203 to ~~[34.216]~~ **34.218** shall not be severable. In the event  
3 a court of competent jurisdiction rules that any part of this act is unenforceable, the entire act  
4 shall be rendered null and void.

**34.218. 1. Any entity that violates the provisions of sections 34.203 to 34.217 shall**  
2 **be liable to the person affected for such equitable relief as may be appropriate, including**  
3 **reasonable attorney's fees.**

4 **2. Any entity that violates the provisions of sections 34.203 to 34.217 shall not be**  
5 **eligible for any state funding or tax credits issued by the state.**

~~[34.216. 1. For purposes of this section, the term "project labor~~  
2 ~~agreement" shall be defined as a multiemployer, multiunion pre-hire agreement~~  
3 ~~designed to systemize labor relations at a construction site that is required by the~~  
4 ~~state or a political subdivision of the state as a condition of a bid specification for~~

5 a construction project, thereby insuring that all contractors and subcontractors on  
6 a project comply with the terms of a union-only agreement.

7 ~~2. The state or a political subdivision of the state may enter into a~~  
8 ~~union-only project labor agreement for the procurement of construction services;~~  
9 ~~except as provided in section 34.209, on a project-by-project basis only if the~~  
10 ~~project is funded fifty percent or less with state funds and only on the condition~~  
11 ~~that:~~

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

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

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

19 ~~— (c) Whether the union-only project labor agreement impacts the~~  
20 ~~availability of a qualified work force; and~~

21 ~~— (d) Whether the scope of the union-only project labor agreement has a~~  
22 ~~business justification for the project as bid;~~

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

28 ~~— (3) No fewer than fourteen days but not more than thirty days following~~  
29 ~~publication of the notice of a public hearing, the state or political subdivision~~  
30 ~~shall conduct a public hearing on whether to proceed with its intent to require a~~  
31 ~~union-only project labor agreement;~~

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

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

41 ~~— (2) The labor and industrial relations commission shall consider the~~  
42 ~~appeal in subdivision (1) of this section under a rational basis standard of review.~~

43 ~~— (3) The labor and industrial relations commission shall hold a hearing on~~  
44 ~~the appeal within sixty days of the filing of the appeal. The commission shall~~  
45 ~~issue its decision within ninety days of the filing date of the appeal.~~

46 ~~— (4) Any aggrieved party from the labor and industrial relations~~  
47 ~~commission decision set forth in subdivision (3) of this subsection may file an~~

48 ~~appeal with the circuit court of Cole County within thirty days of the~~  
49 ~~commission's decision.]~~

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