

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 359
95TH GENERAL ASSEMBLY

1170L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to state highways and transportation commission design-build highway project contracts, with an emergency clause.

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

Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows:

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state highways and transportation commission is authorized to enter into highway design-build project contracts. [The authority granted to the state highways and transportation commission by this section shall be limited to a total of three design-build project contracts. Two design-build projects authorized by this section shall be selected by the highways and transportation commission from 1992 fifteen year plan projects.] **The total number of highway design-build project contracts awarded by the commission in any state fiscal year shall not exceed two percent of the total number of all state highway system projects listed in the commission's approved statewide transportation improvement project for that state fiscal year.**

Authority to enter into design-build projects granted by this section shall expire on July 1, [2012] **2022**, unless extended by statute [or upon completion of three projects, whichever is first].

2. For the purpose of this section a "design-builder" is defined as an individual, corporation, partnership, joint venture or other entity, including combinations of such entities making a proposal to perform or performing a design-build highway project contract.

3. For the purpose of this section, "design-build highway project contract" is defined as the procurement of all materials and services necessary for the design, construction,

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.

18 reconstruction or improvement of a state highway project in a single contract with a
19 design-builder capable of providing the necessary materials and services.

20 4. For the purpose of this section, "highway project" is defined as the design,
21 construction, reconstruction or improvement of highways or bridges under contract with the state
22 highways and transportation commission, which is funded by state, federal or local funds or any
23 combination of such funds.

24 5. In using a design-build highway project contract, the commission shall establish a
25 written procedure by rule for prequalifying design-builders before such design-builders will be
26 allowed to make a proposal on the project.

27 6. In any design-build highway project contract, whether involving state or federal funds,
28 the commission shall require that each person submitting a request for qualifications provide a
29 detailed disadvantaged business enterprise participation plan. The plan shall provide information
30 describing the experience of the person in meeting disadvantaged business enterprise
31 participation goals, how the person will meet the department of transportation's disadvantaged
32 business enterprise participation goal and such other qualifications that the commission considers
33 to be in the best interest of the state.

34 7. The commission is authorized to issue a request for proposals to a maximum of five
35 design-builders prequalified in accordance with subsection 5 of this section.

36 8. The commission may require approval of any person performing subcontract work on
37 the design-build highway project.

38 9. [The bid bond and performance bond requirements of section 227.100 and the
39 payment bond requirements of section 107.170, RSMo, shall apply to the design-build highway
40 project.

41 10. The requirements of subsection 9 of this section may be modified by the commission
42 for any design-build highway project contract which is designated by the commission as a
43 "design-build-finance-maintain" project, and for which the contract with the design-builder
44 exceeds twenty-five years. For such projects,] **Notwithstanding the provisions of sections**
45 **107.170, RSMo, and 227.100, to the contrary**, the commission shall require the design-builder
46 to provide[, or cause to be provided by the construction entity or entities providing construction
47 services under contract] to the [design-builder] **commission** directly, such **bid, performance**
48 **and payment** bonds, or such [other security] **letters of credit**, in such terms, durations, [and]
49 amounts, **and on such forms** as the commission may determine to be adequate for its protection
50 and provided by a surety, sureties, or financial institution or institutions satisfactory to the
51 commission, including but not limited to:

52 (1) A bid or proposal bond, [or other security authorized under subsection 2 of section
53 227.100, in an amount of not less than five million dollars] **cash or a certified or cashier's**
54 **check;**

55 (2) A performance bond or bonds for the construction period specified in the
56 design-build highway project contract [in an aggregate amount of not less than two hundred
57 million dollars or twenty-five percent of a reasonable estimate of the cost of construction work,
58 whichever amount is lower, except the commission may allow other security in lieu of or in
59 addition to any bond or bonds, including but not limited to letters of credit or other negotiable
60 instruments, such other or additional security to be on such terms, for such durations, and in such
61 amounts as the commission may determine to be adequate for the protection of the commission,
62 and to be provided by sureties or financial institutions satisfactory to the commission] **equal to**
63 **a reasonable estimate of the total cost of construction work under the terms of the design-**
64 **build highway project contract, unless the commission determines in writing supported by**
65 **specific findings that a performance bond or bonds in such amount is impractical, in which**
66 **case the commission shall establish the amount of the performance bond or bonds; and**

67 (3) A payment bond or bonds that shall be enforceable under section 522.300, RSMo,
68 for the protection of persons supplying labor and material in carrying out the construction work
69 provided for in the design-build highway project contract. The aggregate amount of the payment
70 bond or bonds shall equal a reasonable estimate of the total amount payable for the cost of
71 construction work under the terms of the design-build highway project contract unless the
72 commission determines in writing supported by specific findings that a payment bond or bonds
73 in such amount is impractical, in which case the commission shall establish the amount of the
74 payment bond or bonds; except that the amount of the payment bond or bonds shall not be less
75 than the aggregate amount of the performance bond or bonds [and the additional security to such
76 performance bond or bonds, or in the amount of the other security used in lieu of the
77 performance bond or bonds].

78 [11.] **10.** The commission is authorized to prescribe the form of the contracts for the
79 work.

80 [12.] **11.** The commission is empowered to make all final decisions concerning the
81 performance of the work under the design-build highway project contract, including claims for
82 additional time and compensation.

83 [13.] **12.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the
84 procurement of architectural, engineering or land surveying services for the design-build
85 highway project, except that any person providing architectural, engineering or land surveying
86 services for the design-builder on the design-build highway project must be licensed in Missouri
87 to provide such services.

88 [14.] **13.** The commission shall pay a reasonable stipend to prequalified responsive
89 design-builders who submit a proposal, but are not awarded the design-build highway project.

90 [15.] **14.** The commission shall comply with the provisions of any act of congress or any
91 regulations of any federal administrative agency which provides and authorizes the use of federal
92 funds for highway projects using the design-build process.

93 [16.] **15.** The commission shall promulgate administrative rules to implement this
94 section or to secure federal funds. Such rules shall be published for comment in the Missouri
95 Register and shall include prequalification criteria, the make-up of the prequalification review
96 team, specifications for the design criteria package, the method of advertising, receiving and
97 evaluating proposals from design-builders, the criteria for awarding the design-build highway
98 project based on the design criteria package and a separate proposal stating the cost of
99 construction, and other methods, procedures and criteria necessary to administer this section.

100 [17.] **16.** The commission shall make a status report to the members of the general
101 assembly and the governor following the award of the design-build project, as an individual
102 component of the annual report submitted by the commission to the joint transportation oversight
103 committee in accordance with the provisions of section 21.795, RSMo. The annual report prior
104 to advertisement of the design-build highway project contracts shall state the goals of the project
105 in reducing costs and/or the time of completion for the project in comparison to the
106 design-bid-build method of construction and objective measurements to be utilized in
107 determining achievement of such goals. Subsequent annual reports shall include: the time
108 estimated for design and construction of different phases or segments of the project and the
109 actual time required to complete such work during the period; the amount of each progress
110 payment to the design-builder during the period and the percentage and a description of the
111 portion of the project completed regarding such payment; the number and a description of design
112 change orders issued during the period and the cost of each such change order; upon substantial
113 and final completion, the total cost of the design-build highway project with a breakdown of
114 costs for design and construction; and such other measurements as specified by rule. The annual
115 report immediately after final completion of the project shall state an assessment of the
116 advantages and disadvantages of the design-build method of contracting for highway and bridge
117 projects in comparison to the design-bid-build method of contracting and an assessment of
118 whether the goals of the project in reducing costs and/or the time of completion of the project
119 were met.

120 [18.] **17.** The commission shall give public notice of a request for qualifications in at
121 least two public newspapers that are distributed wholly or in part in this state and at least one
122 construction industry trade publication that is distributed nationally.

123 [19.] **18.** The commission shall publish its cost estimates of the design-build highway
124 project award and the project completion date along with its public notice of a request for
125 qualifications of the design-build project.

126 [20.] **19.** If the commission fails to receive at least two responsive submissions from
127 design-builders considered qualified, submissions shall not be opened and it shall readvertise the
128 project.

129 **20. Nothing in this section shall affect the existing rights of property owners whose**
130 **property interests are affected by any highway design-build project constructed under this**
131 **section.**

132 **21. Any highway design-build project constructed under this section shall comply**
133 **with the clearance and safety requirements regarding railroads as set forth by the Federal**
134 **Railroad Administration. Any affected railroad regulated by the FRA shall be given**
135 **reasonable opportunity to review the project plans and comment prior to the**
136 **commencement of construction on the project to ensure such safety requirements have**
137 **been met. In addition, any design-build contractor operating under the authority of the**
138 **department shall adhere to existing agreements between the department and any affected**
139 **railroad that is regulated by the Federal Railroad Administration.**

Section B. Because Congress is considering enactment of an economic stimulus bill that
2 appropriates additional federal-aid highway funds to all states, including Missouri, which must
3 be committed for additional state highway system projects within the expedited time frame
4 specified in the economic stimulus bill, immediate action is necessary to ensure that the state of
5 Missouri, through the Missouri highways and transportation commission, has design-build
6 authority to meet the highway project construction start date requirements, section A of this act
7 is deemed necessary for the immediate preservation of the public health, welfare, peace and
8 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and
9 section A of this act shall be in full force and effect upon its passage and approval.

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