

HOUSE _____ **AMENDMENT NO.** _____

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 667, Pages 22-24 , Section 537.033, by
2 deleting all of said section from the bill and inserting in lieu thereof the following:

3
4 “537.033. 1. As used in this section, unless the context clearly indicates otherwise, the
5 following words and terms shall have the meanings indicated:

6 (1) "Design professional", an architect, landscape architect, professional land surveyor, or
7 professional engineer licensed under the provisions of chapter 327 or any corporation authorized
8 to practice architecture, landscape architecture, land surveying, or engineering under section
9 327.401 while acting within their scope of practice;

10 (2) "Lessons learned", internal meetings, classes, publications in any medium,
11 presentations, lectures, or other means of teaching and communicating after substantial
12 completion of the project which are conducted solely and exclusively by and with the employees,
13 partners, and coworkers of the design professional who prepared the project's design for the
14 purpose of learning best practices and reducing errors and omissions in design documents and
15 procedures. Lessons learned shall not include presentations, lectures, teaching, or communication
16 made to or by third parties who are not employees, partners, and coworkers of the design
17 professional whose work is being evaluated and discussed;

18 (3) "Peer review process", a process through which design professionals evaluate,
19 maintain, or monitor the quality and utilization of architectural, landscape architectural, land
20 surveying, or engineering services, prepare internal lessons learned, or exercise any combination
21 of such responsibilities;

22 (4) "Substantial completion", the construction of the project covered by the design
23 professional's design documents has reached substantial completion, as that term is defined in
24 section 436.327.

25 2. A peer review process shall only be performed by a design professional licensed in any
26 jurisdiction in the United States in the same profession as would be required under chapter 327 to
27 prepare the design documents being reviewed, or in a case requiring multiple professions, by a
28 person or persons holding the proper licenses. A peer review process may be performed by one or

1 more design professionals appointed by the partners, shareholders, board of directors, chief
2 executive officer, quality control director, or employed design professionals of a partnership or of
3 a corporation authorized under section 327.401 to practice architecture, landscape architecture,
4 land surveying, or engineering, or by the owner of a sole proprietorship engaged in one or more of
5 such professions. Any individual identified in this subsection and performing a peer review shall
6 be deemed a peer reviewer.

7 3. Each peer reviewer described in this subsection shall be immune from civil liability for
8 such acts so long as the acts are performed in good faith, without malice, and are reasonably
9 related to the scope of inquiry of the peer review process. The immunity in this subsection is
10 intended to cover only outside peer reviews by a third-party design professional who is not an
11 employee, coworker, or partner of the design professional whose design is being peer reviewed
12 before substantial completion of the project and who has no other role in the project besides
13 performing the peer review.

14 4. This section does not provide immunity to any in-house peer reviewer when performed
15 by employees, coworkers, or partners of the design professional who prepares the design, nor are
16 any such documents or peer review comments, other than lessons learned, inadmissible into
17 evidence in any judicial or administrative action.

18 5. Except for documents related to lessons learned, the interviews, memoranda,
19 proceedings, findings, deliberations, reports, and minutes of the peer review process, or the
20 existence of the same, concerning the professional services provided to a client or member of the
21 public are subject to discovery, subpoena, or other means of legal compulsion for their release to
22 any person or entity and shall be admissible into evidence in any judicial or administrative action
23 for failure to provide appropriate architectural, landscape architectural, land surveying, or
24 engineering services, subject to applicable rules of the court or tribunal. Except as otherwise
25 provided in this section, no person who was in attendance at, or participated in, any lessons
26 learned process or proceedings shall be permitted or required to disclose any information acquired
27 in connection with or in the course of such proceeding, or to disclose any opinion,
28 recommendation, or evaluation made in a lessons learned process or proceeding; provided,
29 however, that information otherwise discoverable or admissible from original sources is not to be
30 construed as immune from discovery or use in any proceeding merely because it was presented
31 during a lessons learned process or proceeding nor is a member, employee, or agent involved in
32 any such process or proceeding, or other person appearing before a peer reviewer, to be prevented
33 from testifying as to matters within his or her personal knowledge and in accordance with the
34 other provisions of this section, but such witness cannot be questioned about a lessons learned
35 process or proceeding or about opinions formed as a result of such process or proceeding. The
36 disclosure of any memoranda, proceedings, reports, or minutes of a lessons learned proceeding to

1 any person or entity, including but not limited to governmental agencies, professional accrediting
2 agencies, or other design professionals, whether proper or improper, shall not waive or have any
3 effect upon its confidentiality, nondiscoverability, or nonadmissibility.

4 6. Nothing in this section shall limit authority otherwise provided by law of the Missouri
5 board for architects, professional engineers, professional land surveyors, and landscape architects
6 to obtain information by subpoena or other authorized process from a peer reviewer or to require
7 disclosure of otherwise confidential information relating to matters and investigations within the
8 jurisdiction of such licensing board.

9 7. The provisions of this section shall expire on January 1, 2023, unless reauthorized by
10 an act of the general assembly. The provisions of this section shall continue to apply to peer
11 reviews and lessons learned proceedings performed prior to the expiration date of this section.”;
12 and

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14 Further amend said bill by amending the title, enacting clause, and intersectional references
15 accordingly.