

SECOND REGULAR SESSION

# HOUSE BILL NO. 2131

## 91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BEARDEN, DEMPSEY, OSTMANN,  
LUETKENHAUS AND HOLT (Co-sponsors).

Read 1<sup>st</sup> time March 7, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4597L.01I

### AN ACT

To repeal sections 142.803, 226.133, 226.200, 227.100, and 313.820, RSMo, and to enact in lieu thereof seven new sections relating to highway and transportation funding, with a referendum clause.

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

Section A. Sections 142.803, 226.133, 226.200, 227.100, and 313.820, RSMo, are  
2 repealed and seven new sections enacted in lieu thereof, to be known as sections 21.262,  
3 142.803, 226.133, 226.200, 227.100, 227.107, and 313.820, to read as follows:

**21.262. For all fiscal years beginning on or after July 1, 2003, and ending on or  
2 before June 30, 2013, ten percent of the percentage of growth in the general revenue of the  
3 state shall be appropriated exclusively for highway and transportation purposes.**

142.803. 1. A tax is levied and imposed on all motor fuel used or consumed in this state  
2 as follows:

3 (1) Motor fuel, seventeen cents per gallon[. Beginning April 1, 2008, the tax rate shall  
4 become eleven cents per gallon];

5 (2) Alternative fuels, not subject to the decal fees as provided in section 142.869, with  
6 a power potential equivalent of motor fuel. In the event alternative fuel, which is not commonly  
7 sold or measured by the gallon, is used in motor vehicles on the highways of this state, the  
8 director is authorized to assess and collect a tax upon such alternative fuel measured by the  
9 nearest power potential equivalent to that of one gallon of regular grade gasoline. The

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended  
to be omitted in the law.**

10 determination by the director of the power potential equivalent of such alternative fuel shall be  
11 prima facie correct;

12 (3) Aviation fuel used in propelling aircraft with reciprocating engines, nine cents per  
13 gallon as levied and imposed by section 155.080, RSMo, to be collected as required under this  
14 chapter.

15 2. All taxes, surcharges and fees are imposed upon the ultimate consumer, but are to be  
16 precollected as described in this chapter, for the facility and convenience of the consumer. The  
17 levy and assessment on other persons as specified in this chapter shall be as agents of this state  
18 for the precollection of the tax.

19 **3. In addition to the tax levied and imposed pursuant to subsection 1 of this section,**  
20 **an additional tax of six cents per gallon is hereby levied and imposed on diesel fuel, as**  
21 **defined in section 142.800, used or consumed in this state. The revenue derived from the**  
22 **additional tax imposed pursuant to this subsection shall be distributed and used as**  
23 **provided in article IV, sections 30(a) and 30(b) of the Missouri Constitution.**

24 226.133. 1. The general assembly may authorize the highways and transportation  
25 commission to issue bonds or other evidence of indebtedness in an amount not to exceed two  
26 billion dollars from fiscal year 2001 to fiscal year 2006; except that, the highways and  
27 transportation commission may immediately authorize issue of bonds up to two hundred fifty  
28 million dollars for the purpose of providing funds for use in highway construction and repairs  
29 scheduled in the five-year plan. The principal amount of such bonds shall not exceed five  
30 hundred million dollars in any one fiscal year. Proceeds from the issuance of the bonds shall be  
31 provided to the department of transportation to pay for the cost of construction engineering and  
32 construction. The proceeds from the bonds shall not be used to pay for administrative expenses,  
33 including but not limited to planning and design expenses. Contracted final design shall not be  
34 considered an administrative expense, but shall not exceed seven percent of any project.

35 2. To obtain authorization for the issuance of bonds, the highways and transportation  
36 commission shall annually present to the general assembly, by the tenth legislative day, a  
37 proposed plan and an analysis demonstrating the feasibility and appropriateness thereof. The  
38 plan to issue bonds shall become effective no later than forty-five calendar days after the plan  
39 proposed by the highways and transportation commission is submitted to a regular session of the  
40 general assembly, unless it is disapproved within forty-five calendar days of its submission to  
41 a regular session by a concurrent resolution introduced within fourteen calendar days of the  
42 submission of the plan to a regular session of the general assembly and adopted by a majority  
43 vote of the elected members of each house. If no concurrent resolution disapproving of the  
44 highway plan is introduced within fourteen calendar days of the submission of the plan to the  
45 legislature, then the plan shall become effective immediately. The presiding officer of each

46 house in which a concurrent resolution disapproving of a plan to issue bonds has been  
47 introduced, unless the resolution has been previously accepted or rejected by that house, shall  
48 submit it to a vote of the membership not sooner than seven calendar days or later than fourteen  
49 calendar days after introduction of the concurrent resolution pertaining to the department of  
50 transportation plan. The presiding officer of the house passing a concurrent resolution  
51 disapproving of a plan to issue bonds shall immediately forward the bill to the other house and  
52 the presiding officer of that house shall submit it to a vote of the membership not sooner than  
53 seven calendar days or later than fourteen calendar days of its receipt from the other legislative  
54 body. The plan submitted by the highways and transportation commission shall not be subject  
55 to amendment by either chamber and may only be rejected in its entirety.

56         3. The highways and transportation commission shall offer such bonds at public sale or  
57 negotiated sale. The bonds shall be for a period of not less than ten years and not more than  
58 twenty years from their date of issue and shall bear interest at a rate or rates not exceeding the  
59 rate permitted by law.

60         4. The proceeds of the sale or sales of any bonds issued pursuant to this section shall be  
61 paid into the state road fund to be expended for the purpose specified pursuant to the provisions  
62 of section 226.220.

63         5. Bonds issued pursuant to this section shall be state road bonds as such term is used  
64 in section 30(b) of article IV of the state constitution, and as such, principal and interest  
65 payments on such bonds shall be made from the state road fund as provided in section 30(b) of  
66 article IV of the state constitution. Bonds issued pursuant to this section shall not be deemed to  
67 constitute a debt or liability of the state or a pledge of the full faith and credit of the state, and  
68 the principal and interest on such bonds shall be payable solely from the state road fund. Bonds  
69 issued pursuant to this section, the interest thereon, or any proceeds from such bonds, shall be  
70 exempt from taxation in the state of Missouri for all purposes except for the state estate tax.

71         6. Bonds may be issued for the purpose of refunding, either at maturity or in advance of  
72 maturity, any bonds issued under this section. The proceeds of such refunding bonds may either  
73 be applied to the payment of the bonds being refunded or deposited in trust and maintained in  
74 cash or investments for the retirement of the bonds being refunded, as shall be specified by the  
75 highways and transportation commission and the authorizing resolution or trust indenture  
76 securing such refunding bonds. The authorizing resolution or trust indenture securing the  
77 refunding bonds shall specify the amount and other terms of the refunding bonds and may  
78 provide that the refunding bonds shall have the same security for their payment as provided for  
79 the bonds being refunded. The refunding bonds shall be for a period of not less than ten years  
80 and not more than twenty years from their date of issue and shall bear interest at a rate or rates  
81 not exceeding the rate permitted by law. The principal amount of refunding bonds issued

82 pursuant to this section shall not be counted toward the limit on the principal amount of bonds  
83 permitted under this section.

84 **7. In connection with the underwriting of any bonds issued pursuant to this section**  
85 **on or after January 1, 2003, such bonds shall be senior-managed by underwriting firms**  
86 **headquartered in this state as long as such underwriting firms are not deemed to be**  
87 **unqualified or price-uncompetitive.**

226.200. 1. There is hereby created a "State Highways and Transportation Department  
2 Fund" into which shall be paid or transferred all state revenue derived from highway users as an  
3 incident to their use or right to use the highways of the state, including all state license fees and  
4 taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the  
5 privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales  
6 tax on motor vehicles and trailers, and all property taxes), and all other revenue received or held  
7 for expenditure by or under the department of transportation or the state highways and  
8 transportation commission, except:

- 9 (1) Money arising from the sale of bonds;  
10 (2) Money received from the United States government; or  
11 (3) Money received for some particular use or uses other than for the payment of  
12 principal and interest on outstanding state road bonds.

13 2. Subject to the limitations of subsection 3 of this section, from said fund shall be paid  
14 or credited the cost:

- 15 (1) [Of collection of all said state revenue derived from highway users as an incident to  
16 their use or right to use the highways of the state;  
17 (2)] Of maintaining the state highways and transportation commission;  
18 [(3)] (2) Of maintaining the state transportation department;  
19 [(4)] (3) Of any workers' compensation for state transportation department employees;  
20 [(5)] (4) Of the share of the transportation department in any retirement program for state  
21 employees, only as may be provided by law; and  
22 [(6)] (5) Of administering and enforcing any state motor vehicle laws or traffic  
23 regulations.

24 3. For all [future] fiscal years **beginning on or after July 1, 2003**, the total amount of  
25 appropriations from the state highways and transportation department fund for all state offices  
26 and departments, **except the Missouri highway patrol**, shall [not exceed the total amount  
27 appropriated for such offices and departments from said fund for fiscal year 2001] **be zero.**

28 4. The provisions of subsection 3 of this section shall not apply to appropriations from  
29 the state highways and transportation department fund to the highways and transportation  
30 commission and the state transportation department or to appropriations to the office of

31 administration for department of transportation employee fringe benefits and OASDHI payments,  
32 or to appropriations to the department of revenue for motor vehicle fuel tax refunds under  
33 chapter 142, RSMo, or to appropriations to the department of revenue for refunds or  
34 overpayments or erroneous payments from the state highways and transportation department  
35 fund.

36 5. All interest earned upon the state highways and transportation department fund shall  
37 be deposited in and to the credit of such fund.

38 6. Any balance remaining in said fund after payment of said costs shall be transferred  
39 to the state road fund.

40 7. Notwithstanding the provisions of subsection 2 of this section to the contrary, any  
41 funds raised as a result of increased taxation pursuant to sections 142.025 and 142.372, RSMo,  
42 after April 1, 1992, shall not be used for administrative purposes or administrative expenses of  
43 the transportation department.

227.100. 1. All contracts for the construction of said work shall be let to the lowest  
2 responsible bidder or bidders after notice and publication of an advertisement in a newspaper  
3 published in the county where the work is to be done, and in such other publications as the  
4 commission may determine; provided, that [in all cases where the project advertised shall be for  
5 the construction of more than ten miles of road, such advertisement shall provide for bids on  
6 sections of said road not to exceed ten miles, as well as on the project as a whole, and] such  
7 contract shall [then] be let so as to provide for the most economical construction of said project.

8 2. Each bid shall be accompanied by a certified check or a cashier's check or a bid bond,  
9 guaranteed by a surety company authorized by the director of the department of insurance to  
10 conduct surety business in the state of Missouri, equal to five percent of the bid, which certified  
11 check, cashier's check, or bid bond shall be deposited with the commissioner as a guaranty and  
12 forfeited to the state treasurer to the credit of the state road fund in the event the successful  
13 bidder fails to comply with the terms of the proposal, and return to the successful bidder on  
14 execution and delivery of the performance bond provided for in subsection 4. The checks of the  
15 unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

16 3. All notices of the letting of contracts under this section shall state the time and place  
17 when and where bids will be received and opened, and all bids shall be sealed and opened only  
18 at the time and place mentioned in such notice and in the presence of some member of the  
19 commission or some person named by the commission for such purpose.

20 4. The successful bidders for the construction of said work shall enter into contracts  
21 furnished and prescribed by the commission and shall give good and sufficient bond, in a sum  
22 equal to the contract price, to the state of Missouri, with sureties approved by the commission  
23 and to ensure the proper and prompt completion of said work in accordance with the provisions

24 of said contracts, and plans and specifications; provided, that if, in the opinion of the majority  
25 of the members of the commission, the lowest bid or bids for the construction of any of the  
26 roads, or parts of roads, herein authorized to be constructed, shall be excessive, then, and in that  
27 event, said commission shall have the right, and it is hereby empowered and authorized to reject  
28 any or all bids, and to construct, under its own direction and supervision, all of such roads and  
29 bridges, or any part thereof.

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

2 (1) **"Design-build highway project contract"**, the procurement of all materials and  
3 services necessary for the design, construction, reconstruction, improvement, or  
4 maintenance of a highway project in a single contract with a person or persons capable of  
5 providing the necessary materials and services;

6 (2) **"Design-build prequalification review team" or "review team"**, a team  
7 authorized by the commission to make recommendations to the commission on persons  
8 who are qualified to bid on a design-build project. The review team shall be composed of  
9 four representatives from the department of transportation, one representative from the  
10 Associated General Contractors of Missouri and one representative from the consulting  
11 engineers council of Missouri;

12 (3) **"Highway project"**, the construction, establishment, or maintenance of  
13 highways or bridges;

14 (4) **"Person"**, individuals, corporations, partnerships, joint ventures, limited  
15 liability companies, or other business organizations.

16 2. As an alternative to the requirements and procedures specified in sections  
17 227.040 to 227.100, the commission may enter into design-build highway project contracts.  
18 The first design-build highway project shall be a pilot project located on the interstate  
19 highway system. Subsequent design-build highway projects will be selected from interstate  
20 highway and bridge projects in the five-year plan or any highway or bridge project that  
21 is deemed by the commission to be an emergency project.

22 3. In using a design-build highway project contract, the commission shall  
23 prequalify persons based on recommendations submitted by the design-build  
24 prequalification review team before the persons will be allowed to bid on a project. Such  
25 prequalification shall be conducted as follows:

26 (1) The commission shall give public notice of a request for qualifications in at least  
27 two public newspapers that are distributed wholly or in part in this state and in at least one  
28 construction industry trade publication that is distributed nationally;

29 (2) The commission shall issue a request for qualifications to all persons requesting  
30 one in accordance with the instructions in the public notice. In the request for

31 qualifications, the commission may require that all persons submit information in a  
32 prescribed format demonstrating their relevant design and construction qualifications and  
33 experience, financial capacity, and capability of obtaining performance and payment  
34 bonds and insurance coverage specified by the commission, ability to comply with all  
35 applicable federal, state, and local laws and regulations. In any construction contract,  
36 whether involving state or federal funds, the commission shall require that each person  
37 submitting a request for qualifications provide a detailed disadvantaged business  
38 enterprise participation plan. The plan shall provide information describing the  
39 experience of the person in meeting disadvantaged business enterprise participation goals,  
40 how the person will meet the department of transportation's disadvantaged business  
41 enterprise participation goal, and such other qualifications that the commission considers  
42 to be in the best interest of the state;

43 (3) The commission may investigate and verify all information submitted. All  
44 financial information, trade secrets, or other information customarily regarded as  
45 confidential business information submitted to or obtained by the commission during the  
46 contracting process set forth in this section shall be protected from disclosure pursuant to  
47 section 227.105 and section 610.021, RSMo;

48 (4) The review team shall evaluate and rate all persons submitting responsive  
49 statements of qualifications. Based upon such ratings, the review team shall make a  
50 recommendation to the commission as to which persons should be selected to receive  
51 requests for proposals;

52 (5) The review team may recommend any number of persons to receive requests  
53 for proposals, provided that if the review team fails to receive at least three responsive  
54 submissions from persons considered qualified by the review team, the review team shall  
55 notify the commission. The commission may then readvertise the project.

56 4. The commission shall issue a request for proposals to all persons prequalified in  
57 accordance with subsection 3 of this section. The request for proposals shall set forth:

58 (1) The scope of work, contract specifications, work requirements, and other  
59 requirements that have a substantial impact on the cost of the work as determined by the  
60 commission; and

61 (2) Criteria to be used by the commission to determine whether proposals are  
62 responsive and a description of the criteria and procedures to be used to evaluate  
63 proposals.

64 5. Proposals must consist of two separate components to be submitted to the  
65 commission simultaneously but separately:

66 (1) A sealed design-build proposal; and

67           **(2) A sealed lump sum price proposal.**

68

69   **The commission shall evaluate and score responsive design-build proposals based upon**  
70   **criteria that may include proposed design, constructability, long-term maintenance costs,**  
71   **aesthetics, local impact, travel, and other user costs and other factors that the commission**  
72   **considers to be in the best interest of the state. The commission shall then publicly open**  
73   **and read responsive lump sum price proposals and divide each price by the score of that**  
74   **person's design-build proposal, yielding an overall value rating for each person. The**  
75   **commission may award the contract to the person with the lowest responsive overall value**  
76   **rating and the commission's award decision is final and is not subject to review or appeal.**  
77   **The commission may also reject any or all proposals for design-build highway project**  
78   **contracts for any reason.**

79           **6. The commission may require approval of any person performing subcontract**  
80   **work on a design-build highway project contract.**

81           **7. The bid bond and performance bond requirements of section 227.100 and the**  
82   **payment bond requirements of section 107.170, RSMo, shall apply to a design-build**  
83   **highway project contract. The commission shall prescribe the form of the contracts for the**  
84   **work, and is empowered to make all final decisions concerning the performance of the**  
85   **work under its contracts, including claims for additional time and compensation.**

86           **8. Sections 8.285 to 8.291, RSMo, shall not apply to the procurement of**  
87   **architectural, engineering, or land surveying services for a design-build highway project**  
88   **contract; except that any person providing architectural, engineering, or land surveying**  
89   **services for a design-build highway project contract shall be licensed in Missouri to**  
90   **provide such services.**

91           **9. The commission is authorized to pay a fee to all responsive bidders who are not**  
92   **awarded a design-build highway project. The fee and criteria for responsiveness shall be**  
93   **set forth in the request for qualification and request for proposals issued by the**  
94   **commission. In the event the commission rejects all bid proposals for a design-build**  
95   **highway project, the commission may subsequently submit a new request for proposal on**  
96   **the previously rejected design-build highway project. Any person who receives a fee**  
97   **pursuant to this section for a responsive bid on the rejected design-build highway project**  
98   **is prohibited from receiving a fee for a responsive bid on the subsequent design-build**  
99   **highway project.**

313.820. 1. An excursion boat licensee shall pay to the commission an admission fee  
2 of two dollars for each person embarking on an excursion gambling boat with a ticket of  
3 admission. One dollar of such fee shall be deposited to the credit of the gaming commission



4 fund as authorized pursuant to section 313.835, and one dollar of such fee shall not be considered  
5 state funds and shall be paid to the home dock city or county. Subject to appropriation, one cent  
6 of such fee deposited to the credit of the gaming commission fund may be deposited to the credit  
7 of the compulsive gamblers fund created pursuant to the provisions of section 313.842. Nothing  
8 in this section shall preclude any licensee from charging any amount deemed necessary for a  
9 ticket of admission to any person embarking on an excursion gambling boat. If tickets are issued  
10 which are good for more than one excursion, the admission fee shall be paid to the commission  
11 for each person using the ticket on each excursion that the ticket is used. If free passes or  
12 complimentary admission tickets are issued, the excursion boat licensee shall pay to the  
13 commission the same fee upon these passes or complimentary tickets as if they were sold at the  
14 regular and usual admission rate; however, the excursion boat licensee may issue fee-free passes  
15 to actual and necessary officials and employees of the licensee or other persons actually working  
16 on the excursion gambling boat. The issuance of fee-free passes is subject to the rules of the  
17 commission, and a list of all persons to whom the fee-free passes are issued shall be filed with  
18 the commission.

19       2. All licensees are subject to all income taxes, sales taxes, earnings taxes, use taxes,  
20 property taxes or any other tax or fee now or hereafter lawfully levied by any political  
21 subdivision; however, no other license tax, permit tax, occupation tax, excursion fee, or taxes  
22 or fees shall be imposed, levied or assessed exclusively upon licensees by a political subdivision.  
23 All state taxes not connected directly to gambling games shall be collected by the department of  
24 revenue. Notwithstanding the provisions of section 32.057, RSMo, to the contrary, the  
25 department of revenue may furnish and the commission may receive tax information to  
26 determine if applicants or licensees are complying with the tax laws of this state; however, any  
27 tax information acquired by the commission shall not become public record and shall be used  
28 exclusively for commission business.

29       **3. An excursion boat licensee shall pay a two dollar admission fee, in addition to the**  
30 **admission fee imposed in subsection 1 of this section, for each person embarking on an**  
31 **excursion gambling boat with a ticket of admission. Two dollars of the additional fee**  
32 **imposed pursuant to this subsection shall be deposited to the credit of the state highways**  
33 **and transportation department fund and distributed as follows: forty-five million seven**  
34 **hundred thousand dollars shall be transferred to the state transportation fund used**  
35 **exclusively for mass transportation projects, ten percent of which shall be used for**  
36 **transportation of the disabled; the remaining revenue derived from the additional two**  
37 **dollar fee shall be used exclusively for highway and transportation purposes.**

Section B. Section A of this act is hereby submitted to the qualified voters of this state  
2 for approval or rejection at an election which is hereby ordered and which shall be held and

3 conducted on the Tuesday immediately following the first Monday in November, 2002, or at a  
4 special election to be called by the governor for that purpose, pursuant to the laws and  
5 constitutional provisions of this state applicable to general elections and the submission of  
6 referendum measures by initiative petition, and it shall become effective when approved by a  
7 majority of the votes cast thereon at such election and not otherwise.