

SECOND REGULAR SESSION

HOUSE BILL NO. 1380

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ST. ONGE (Sponsor), YAEGER, THRELKELD, WHORTON,
BIVINS, DOUGHERTY, WRIGHT-JONES, KUESSNER, McGHEE AND BLACK (Co-sponsors).

Read 1st time January 12, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4083L.01I

AN ACT

To amend chapter 227, RSMo, by adding thereto twenty-four new sections relating to the Missouri public-private partnerships transportation act.

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

Section A. Chapter 227, RSMo, is amended by adding thereto twenty-four new sections,
2 to be known as sections 227.600, 227.603, 227.606, 227.609, 227.612, 227.615, 227.618,
3 227.621, 227.624, 227.627, 227.630, 227.633, 227.636, 227.639, 227.642, 227.645, 227.648,
4 227.651, 227.654, 227.657, 227.660, 227.663, 227.666, and 227.669, to read as follows:

227.600. 1. Sections 227.600 to 227.669 shall be known and may be cited as the
2 **"Missouri Public-Private Partnerships Transportation Act".**

3 **2. As used in sections 227.600 to 227.669, unless the context clearly requires**
4 **otherwise, the following terms mean:**

5 **(1) "Commission", the Missouri highways and transportation commission;**

6 **(2) "Comprehensive agreement", the final binding written comprehensive project**
7 **agreement between a private partner and the commission required in section 227.621 to**
8 **finance, develop, and/or operate the project;**

9 **(3) "Department", the Missouri department of transportation;**

10 **(4) "Develop" or "development", to plan, locate, relocate, establish, acquire, lease,**
11 **design, or construct;**

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.

12 (5) "Finance", to fund the costs, expenses, liabilities, fees, profits, and all other
13 charges incurred to finance, develop, and/or operate the project;

14 (6) "Interim agreement", a preliminary binding written agreement between a
15 private partner and the commission that provides for completion of studies and any other
16 activities to advance the financing, development, and/or operation of the project required
17 by section 227.618;

18 (7) "Material default", any default by a private partner in the performance of its
19 duties that jeopardizes adequate service to the public from the project as determined by
20 the commission;

21 (8) "Operate" or "operation", to improve, maintain, equip, modify, repair,
22 administer, or collect user fees;

23 (9) "Private partner", any natural person, corporation, partnership, limited
24 liability company, joint venture, business trust, nonprofit entity, other business entity, or
25 any combination thereof;

26 (10) "Project", a bridge located across the boundaries of the state of Missouri and
27 the state of Illinois and partially in a city not within a county to be financed, developed,
28 and/or operated under agreement between the commission and a private partner and
29 under an agreement between the commission and the Illinois department of transportation;

30 (11) "Public use", a finding by the commission that the project to be financed,
31 developed, and/or operated by a private partner under sections 227.600 to 227.669 will
32 improve or is needed as a necessary addition to the state highway system;

33 (12) "Revenues", include but are not limited to the following which arise out of or
34 in connection with the financing, development, and/or operation of the project:

35 (a) Income;

36 (b) Earnings;

37 (c) Proceeds;

38 (d) User fees;

39 (e) Lease payments;

40 (f) Allocations;

41 (g) Federal, state, and local moneys; or

42 (h) Private sector moneys, grants, bond proceeds, and/or equity investments;

43 (13) "State", the state of Missouri;

44 (14) "State highway system", the state system of highways and bridges planned,
45 located, relocated, established, acquired, constructed, and maintained by the commission
46 under section 30(b), article IV, Constitution of Missouri;

47 (15) "User fees", tolls, fees, or other charges authorized to be imposed by the
48 commission and collected by the private partner for the use of all or a portion of a project
49 under a comprehensive agreement.

227.603. 1. The general assembly finds that:

2 (1) The present and prospective traffic congestion in the designated region of the
3 project and the limited availability of state moneys require such project for the public
4 safety, health, and welfare; and

5 (2) Sections 227.600 to 227.669 will encourage private sector innovation and
6 investment in the state to accomplish the project that would not otherwise be undertaken,
7 thereby serving the public safety, health, and welfare.

8 2. Sections 227.600 to 227.669 shall be liberally construed to accomplish the
9 legislative findings and purposes set forth in this section.

227.606. 1. Any potential private partner may submit a request for approval to the
2 commission to finance, develop, and/or operate a project. The commission may request
3 such additional information and material in a form and manner determined by the
4 commission.

5 2. The commission may charge a reasonable fee to cover the costs of processing,
6 reviewing, and evaluating a request for approval submitted by a potential private partner.

227.609. 1. The commission shall use a competitive procurement process to form
2 a public-private partnership under sections 227.600 to 227.669 and may proceed with a
3 project under sections 227.600 to 227.669 only if the commission issues a request for
4 proposals for the financing, development, and/or operation of the project on the
5 commission's own initiative or in response to a request for approval submitted by a
6 potential private partner under section 227.606.

7 2. The commission shall publish a public notice of the commission's request for
8 proposals, including any deadline for submission of such proposals. The notice shall be
9 published once a week for two consecutive weeks in:

10 (1) A newspaper of general circulation in the city where the proposed project is
11 located;

12 (2) At least one construction industry trade publication that is nationally
13 distributed; and

14 (3) Such other publications or manner as the commission may determine.

15 3. The material and information required for submission by a potential private
16 partner to be responsive to the commission's request for proposal shall be set forth in the
17 proposal. Notwithstanding the provisions of subsection 2 of section 227.606, the
18 commission shall not charge a processing and review fee.

227.612. The commission shall establish a process for the receipt and review of a request for approval or request for proposal. Such process shall, at a minimum, establish a specific schedule for review by the commission of the request for approval and competing proposals, a process for alteration of such schedule by the commission as the commission deems such changes are necessary due to the scope or complexity of proposals received and the type and amount of information necessary for adequate review of proposals in each stage of review.

227.615. The commission may by commission minute approve the project if the commission determines the project will improve and is a needed addition to the state highway system.

227.618. 1. The commission may by commission minute grant tentative approval of the potential private partner whose request for approval or response to a request for proposal provides the best value to the state for financing, developing, and/or operating the project. The commission shall establish criteria for making a determination including:

(1) The general reputation, qualifications, industry experience, and financial capacity of the potential private partner;

(2) The proposed plans for developing and/or operating the project; and

(3) Other criteria that the commission deems appropriate.

2. Prior to the granting of tentative approval by the commission for a potential private partner to finance, develop, and/or operate a project, the commission may review and approve by commission minute an interim agreement with the private partner. Such interim agreement shall be in a form prescribed by the commission and:

(1) May authorize the potential private partner to commence activities for which it may be compensated relating to the proposed project;

(2) Shall establish the process and timing of the negotiation of the comprehensive agreement between the commission and the private partner; and

(3) Shall contain any other provisions that the commission and the potential partner deems appropriate.

227.621. Prior to granting its final approval of a private partner to finance, develop, and/or operate the project, the commission shall review and approve by commission minute a comprehensive agreement in a form and manner prescribed by the commission that shall, at a minimum, provide for:

(1) The start date for construction of the project and any other dates the commission deems necessary to develop and/or operate the project;

7 (2) Review and approval by the commission of the final plans and specifications for
8 the development and/or operation of the project to ensure that such plans and
9 specifications conform to the standards acceptable to the commission;

10 (3) A final financing plan, contingent upon review and approval by the commission;
11 and

12 (4) Any other provisions the commission and private partner deem appropriate.

227.624. If the commission is not satisfied with the results of negotiations with a
2 potential private partner for an agreement, the commission may terminate negotiations
3 with the potential private partner. The commission may reject any and all requests for
4 approval and responses to a request for proposals.

227.627. All information of any kind submitted by a potential private partner to
2 the commission under a request for approval as provided in section 227.606 or under a
3 response to a request for proposal as provided in section 227.609 shall be a closed record
4 under chapter 610, RSMo; provided that, after the private partner and the commission
5 execute the comprehensive agreement information provided by the private partner, the
6 interim agreement and the comprehensive agreement shall be an open record under
7 chapter 610, RSMo.

227.630. The private partner shall have the following powers:

2 (1) To contract with a federal agency, a state or its agencies and political
3 subdivisions, the commission, a local or regional transportation authority, a corporation,
4 a partnership, or any person to finance, develop, and/or operate the project;

5 (2) To lease or acquire any right to use or finance, develop, and/or operate the
6 project with the length of any term to be established in the comprehensive agreement;

7 (3) To collect user fees in connection with the use of the project by the traveling
8 public. The collection and enforcement of such user fees shall be consistent with sections
9 227.660 and 227.666;

10 (4) To borrow money for project purposes at such rates or interest as the private
11 partner may determine; and

12 (5) Any other powers delegated to such private partner in the comprehensive
13 agreement with the commission.

227.633. 1. The private partner shall, in connection with the financing,
2 development, and/or operation of the project, provide the following:

3 (1) Security and warranties in the forms and amounts satisfactory to the
4 commission;

5 (2) An annual financial statement audited by an independent certified public
6 accountant approved by the commission and such other financial reports and information
7 as required by the commission and in a form acceptable to the commission;

8 (3) A summary of any and all compensation from all sources for the project to the
9 private partner;

10 (4) Evidence satisfactory to the commission of procurement and maintenance at the
11 private partner's expense of commercial insurance for such purposes and in an amount
12 required by the commission, including but not limited to:

13 (a) Commercial general liability insurance for all damages and losses imposed by
14 law and assumed under the comprehensive agreement. Commercial general liability
15 insurance shall be in coverage and amount consistent with section 227.663 and shall name
16 the state of Missouri for the benefit of the state legal expense fund, and the commission and
17 the commission's members, agents, and employee's as additional insureds. Each
18 commercial general liability insurance policy and commercial automobile liability
19 insurance policy shall also contain a separation of insureds conditions; and

20 (b) Workers' compensation insurance or evidence provided by the private partner
21 that the private partner is qualified by the division of workers' compensation as self-
22 insured and carries insurance for employer's liability sufficient to comply with all
23 obligations under state law relating to workers' compensation and employer's liability.

24 2. Notwithstanding the provisions of section 107.170, RSMo, and section 227.100
25 to the contrary, a bid bond shall not be required for the project; except that, the
26 commission may require the private partner to provide such other bonds in such amounts
27 determined by the commission to be adequate for the protection of the commission and
28 provided by a surety or sureties satisfactory to the commission, including but not limited
29 to:

30 (1) A performance bond;

31 (2) A payment bond for the protection of all persons supplying labor and material
32 in carrying out the work provided for in the comprehensive agreement for the project. The
33 amount of the payment bond shall equal the total amount payable under the terms of the
34 comprehensive agreement unless the commission determines in writing supported by
35 specific findings that a payment bond in such amount is impractical, in which case the
36 commission shall establish the amount of the payment bond; except that, the amount of the
37 payment bond shall not be less than the amount of the performance bond.

 227.636. The commission may:

2 (1) Delegate any of the commission's powers under sections 227.600 to 227.669 to
3 the department to carry out the purposes of sections 227.600 to 227.669;

4 (2) Promulgate rules to implement the provisions of sections 227.600 to 227.669.
5 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
6 created under the authority delegated in this section shall become effective only if it
7 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
8 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
9 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
10 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
11 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
12 adopted after August 28, 2006, shall be invalid and void; and

13 (3) Make all final decisions concerning the performance and the acceptance of the
14 project work, including claims for additional time and compensation.

 227.639. The commission may impose user fees for the project. The comprehensive
2 agreement shall provide the rate of such user fees as may be established by agreement of
3 the commission and the private partner. Such user fees shall be set in an amount that takes
4 into account any lease payments, reasonable costs of financing, development, and/or
5 operation. A rate schedule of the current user fees imposed and collected for use of the
6 project shall be made available by the private partner or the commission to any member
7 of the public upon request. Such fees shall be the same for persons using the project under
8 similar conditions, except as required by agreement between the commission and the
9 private partner to preserve capacity and prevent congestion on the project. The collection
10 and enforcement of such user fees shall be consistent with sections 227.660 and 227.666.
11 The commission may authorize the private partner by the comprehensive agreement to
12 collect and enforce user fees for the project.

 227.642. 1. The commission may take any action to obtain federal, state, or local
2 government or private sector assistance for the project and may enter into any contracts
3 required for such assistance.

4 2. In the comprehensive agreement, the commission may agree to loan moneys
5 received from any federal, state, or local government or the private sector to the private
6 partner for the development and/or operation of the project from time to time; provided
7 that the commission shall obtain from the private partner such security for any loan made
8 to the private partner in any type or amount as the commission deems necessary.

 227.645. 1. Any financing of the project may be in such amounts and upon such
2 terms and conditions as may be determined by the commission and the private partner in
3 the interim or comprehensive agreement. The commission and the private partner may use
4 any and all revenues that may be available to them and may, to the fullest extent permitted
5 by applicable law, issue debt, equity, or other securities or obligations.

6 **2. The private partner may issue corporate bonds, private activity bonds, refunding**
7 **bonds, notes, and other obligations, and may secure any of such obligations by mortgage,**
8 **pledge, or deed of trust of any or all of the property and income of the private partner.**
9 **The commission may contract with the private partner to assist in issuing bonds, notes, and**
10 **other obligations under this subsection. The private partner shall not mortgage, pledge,**
11 **or give a deed of trust on any real property or interests obtained by eminent domain**
12 **acquired from the state of Missouri or any agency or political subdivision of the state.**
13 **Bonds, notes, and other obligations issued under this subsection shall exclusively be the**
14 **responsibility of the private partner payable solely out of private partner moneys and**
15 **property and shall not constitute debt or liability of the commission, the state of Missouri,**
16 **or any other agency or political subdivision of the state. The private partner and the**
17 **commission shall not be obligated to pay such bonds, notes, or other obligations with any**
18 **moneys other than those specifically pledged to repayment. Any such bonds, notes, or**
19 **other obligations issued by the private partner or the commission shall state on the face**
20 **that they are not obligations of the state of Missouri or any agency or political subdivision**
21 **of the state. Any private partner bonds issued under this subsection, the interest thereon,**
22 **and any proceeds from such bonds shall be exempt from taxation by the state of Missouri**
23 **for all purposes except the state estate tax.**

24 **3. The private partner may also contract with the commission for the commission**
25 **to issue state road bonds for the project and to loan the proceeds thereof to the private**
26 **partner.**

227.648. The commission may by agreement authorize or require a private partner
2 **to exercise any of the following provisions regarding procurement for the financing,**
3 **development, and/or operation of the project:**

4 **(1) Use any project delivery method for the efficient development and/or operation**
5 **of the project. Such project delivery methods shall include but are not limited to project**
6 **delivery methods established in section 8.282, RSMo, or sections 227.100 and 227.107. In**
7 **addition, the limitation in subsection 1 of section 227.107 on the number of design-build**
8 **contracts authorized to be let by the commission shall not apply to the project;**

9 **(2) Make available to the commission, upon request, all procurement records for**
10 **financing, development, and/or operation of the project;**

11 **(3) Exempt the project from the general procurement laws in chapter 34, RSMo.**

227.651. The private partner shall provide the commission a detailed disadvantaged
2 **business enterprise participation plan that conforms to commission reporting requirements**
3 **for the federal disadvantaged business enterprise program under federal law and**
4 **regulations on federal-aid highway projects. The plan shall also provide information**

5 describing the experience of the private partner in meeting disadvantaged business
6 enterprise participation goals, how the private partner will meet the departments
7 disadvantaged business participation goals, and such other qualifications the commission
8 considers to be in the best interest of the state.

227.654. The commission may lease to or for the use of a private partner the project
2 or such right-of-way or other easement in such real estate as the commission deems
3 necessary for the development and/or operation of the project. Such lease by the
4 commission shall be for such value as determined by the commission. No such lease of any
5 real property interest by the commission under this section shall be deemed to amend or
6 modify the public use restrictions acquired by the commission in such real property.

227.657. 1. The commission may condemn lands for the project in the name of the
2 state of Missouri.

3 2. If condemnation becomes necessary, the commission shall act under chapter 523,
4 RSMo, and may condemn a fee simple or other interest in land. Any amounts to be paid
5 in such condemnation proceeding shall be paid by the private partner under the
6 comprehensive agreement.

7 3. The private partner may, after prior notice to the owner to enter upon the
8 private property subject to the taking, survey and determine the most advantageous route
9 and design. The private partner shall be liable for all damages to the property resulting
10 from such inspection.

227.660. 1. The private partner may use any method for collecting and enforcing
2 user fees for the use of the project which may include, but are not limited to, toll tickets,
3 barrier toll facilities, billing accounts, commuter passes, and electronic recording or
4 identification devices. The display of a recording or identification device issued or
5 authorized by the private partner for such purposes on or near the windshield of a motor
6 vehicle shall not be a violation of any law or rule in the state of Missouri unless the device
7 is attached in a manner that obstructs the operator's clear view of the project.

8 2. The private partner operating the project as a toll facility shall post notice on or
9 around such facility in the plain view of operators of motor vehicles using such facility
10 which reads as follows:

11 "NOTICE: FAILURE TO PAY THE REQUIRED TOLL IS A TRAFFIC
12 VIOLATION. TOLL BOOTH OPERATORS WILL REPORT ANY FAILURE TO PAY
13 REQUIRED TOLLS TO LAW ENFORCEMENT OFFICIALS WHO WILL ISSUE A
14 TRAFFIC CITATION."

15 3. The owner of a motor vehicle involved in a violation for failure to pay the
16 required toll is guilty of an infraction and upon conviction shall be required to pay the

17 amount of the toll that was the subject of the violation which shall be remitted to the
18 private partner and a fine in an amount not to exceed two hundred dollars.

19 4. A written report or telephone call from a toll enforcement officer, law
20 enforcement officer, or photo monitoring system evidence that indicates a required toll was
21 not paid is admissible in any proceeding to enforce this section, subject to foundation
22 evidence to establish the authenticity of the report, call, or photographs. Photo monitoring
23 system evidence that shows the motor vehicle, whether operated by the owner or another
24 operator, has failed to pay a toll shall raise a rebuttable presumption that the motor vehicle
25 shown in the photographic evidence was used to commit a violation of this section. If
26 charges are filed against multiple owners of a motor vehicle, only one of the owners shall
27 be convicted and court costs may be assessed against only one of the owners. If the motor
28 vehicle involved in the violation is registered in the name of a rental or leasing company
29 and the vehicle is rented or leased to another person at the time of the violation, the rental
30 or leasing company may rebut the presumption by providing law enforcement or the
31 prosecuting authority with a copy of the rental or lease agreement in effect at the time of
32 the violation. No prosecuting authority shall bring any legal proceeding against a rental
33 or leasing company under this section unless prior written notice of the violation has been
34 given to such rental or leasing company by registered mail at the address appearing on the
35 motor vehicle's registration and the rental or leasing company has failed to provide the
36 rental or leasing agreement copy within fifteen days of receipt of such notice.

37 5. The following procedures shall be taken for the enforcement of toll collections
38 and issuance of traffic citations under this section:

39 (1) Any toll booth operator witnessing a failure to pay a required toll in violation
40 of this section shall report such violation to a law enforcement officer or agency. The
41 report may be in one of the following forms:

42 (a) A telephone call from a toll enforcement officer to a law enforcement agency
43 indicating a violation and a reasonable description of the motor vehicle violating the toll
44 enforcement provisions of this section, including but not limited to the license plate
45 number, make, model, and color of the motor vehicle;

46 (b) A certificate or a written report sworn to or affirmed by a toll enforcement
47 officer, agent, private partner, Missouri state highway patrol officer, city police officer, or
48 a sheriff's department deputy which alleges that a violation of this section occurred, or a
49 facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or
50 other recorded images produced by a photo monitoring system or a photograph from a
51 photo monitoring system shall be prima facie evidence of the facts contained therein,
52 subject to foundation evidence to establish the authenticity of such photographs,

53 microphotographs, videotape, or other recorded images produced by a photo monitoring
54 system, and shall be admissible in any proceeding charging a violation of the toll collection
55 provisions in this section; provided that, any photographs, microphotographs, videotape,
56 or other recorded images evidencing such a violation shall be available for inspection and
57 admission into evidence in any proceeding to adjudicate the liability for such violation;

58 (2) After a report has been provided to a Missouri law enforcement agency, such
59 agency is authorized to issue a traffic citation for failure to pay the required toll;

60 (3) The law enforcement agency responsible for the issuance of a traffic citation for
61 failure to pay a toll is responsible for prosecution of such citation.

62

63 The provisions of this section shall not prohibit a law enforcement officer from issuing a
64 citation for a violation of any other traffic laws and regulations on the project.

227.663. 1. As a result of the project being a public use and serving the public
2 safety, health, and welfare, tort liability caps are hereby established in this section and
3 made applicable to any private partner and such private partner's employees, agents, and
4 insureds that develops and/or operates the project under sections 227.600 to 227.669. Such
5 tort liability caps shall be a per person cap and a per occurrence cap and shall be in
6 amounts identical to the tort liability caps established in section 537.610, RSMo, as such
7 caps are annually amended by the Implicit Price Deflator for Personal Consumption
8 Expenditures under subsection 5 of section 537.610, RSMo.

9 2. Commercial general liability insurance policy or policies purchased by the
10 private partner under sections 227.600 to 227.669 shall not be used to expand the coverage
11 and amount of the tort liability caps imposed in this section.

227.666. 1. Prior to exercising any of the remedies under this section, the
2 commission shall provide notice of a material default and the opportunity to cure the
3 default for the benefit of the private partner and any persons specified under the
4 comprehensive agreement as providing financing for the project.

5 2. Upon the occurrence of and during the continuation of any material default, the
6 commission may exercise any or all of the following remedies:

7 (1) Make or cause to be made any appropriate claims under the bonds required in
8 section 227.633;

9 (2) By notice to the private partner by certified mail, terminate the comprehensive
10 agreement and exercise any other rights and remedies which may be available to the
11 commission at law or in equity;

12 (3) Condemn under chapter 523, RSMo, any real property interest of the private
13 partner in the project. Any person who provides financing for the project, to the extent

14 of such person's capital investment, may participate in the condemnation proceedings with
15 standing of a property owner;

16 (4) Collect and enforce user fees for the use of the project under section 227.660.

227.669. The commission shall submit an annual status report to the governor and
2 general assembly following execution of the comprehensive agreement as an individual
3 component of the annual report submitted by the commission to the joint transportation
4 oversight committee in accordance with section 21.795, RSMo. The annual report shall
5 assess the advantages and disadvantages of the public-private partnership method of
6 financing, developing, and/or operating the project.

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