

FIRST REGULAR SESSION

# HOUSE BILL NO. 359

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DENISON (Sponsor), HOBBS, MUNZLINGER, KUESSNER, KELLY, MEADOWS, HUGHES, POLLOCK, WETER, FLANIGAN, BROWN (149), KINGERY, QUINN, TILLEY, LARGENT, PARKINSON, DIEHL, KEENEY, SCHARNHORST, MOLENDORP, SCHOELLER, VIEBROCK, DUGGER, ZERR, SMITH (14), MCGHEE, FISHER (125), GUERNSEY, STEVENSON, ERVIN, JONES (117), COX, GATSCHENBERGER, WILSON (130), SCHLOTTACH, DOUGHERTY, WILSON (119), BRUNS, ATKINS, NOLTE, FAITH, NANCE, SCHAAF, BURNETT, SILVEY, STREAM, RUZICKA, ALLEN, BIVINS, BURLISON, YATES, FRANZ, FLOOK, LAIR, DIECKHAUS, GUEST, TRACY, DAY, WRIGHT, NIEVES, SMITH (150), WASSON, WELLS, DEEKEN, PARSON AND DIXON (Co-sponsors).

1170L.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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.

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*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Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows: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. Authority to enter into design-build projects granted by this section shall expire on July 1, 2012, unless extended by statute or upon completion of three projects, whichever is first.]

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.

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

13           3. For the purpose of this section, "design-build highway project contract" is defined as  
14 the procurement of all materials and services necessary for the design, construction,  
15 reconstruction or improvement of a state highway project in a single contract with a  
16 design-builder capable of providing the necessary materials and services.

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

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

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

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

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

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

38           10. The requirements of subsection 9 of this section may be modified by the commission  
39 for any design-build highway project contract which is designated by the commission as a  
40 "design-build-finance-maintain" project, and for which the contract with the design-builder  
41 exceeds twenty-five years. For such projects,] **Notwithstanding the provisions of sections**  
42 **107.170, RSMo, and 227.100, to the contrary**, the commission shall require the design-builder  
43 to provide[, or cause to be provided by the construction entity or entities providing construction  
44 services under contract] to the [design-builder] **commission** directly, such **bid, performance**  
45 **and payment** bonds, or such [other security] **letters of credit**, in such terms, durations, [and]

46 amounts, **and on such forms** as the commission may determine to be adequate for its protection  
47 and provided by a surety, sureties, or financial institution or institutions satisfactory to the  
48 commission, including but not limited to:

49 (1) A bid or proposal bond, [or other security authorized under subsection 2 of section  
50 227.100, in an amount of not less than five million dollars] **cash or a certified or cashier's**  
51 **check;**

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

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

75 [11.] **10.** The commission is authorized to prescribe the form of the contracts for the  
76 work.

77 [12.] **11.** The commission is empowered to make all final decisions concerning the  
78 performance of the work under the design-build highway project contract, including claims for  
79 additional time and compensation.

80 [13.] **12.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the  
81 procurement of architectural, engineering or land surveying services for the design-build

82 highway project, except that any person providing architectural, engineering or land surveying  
83 services for the design-builder on the design-build highway project must be licensed in Missouri  
84 to provide such services.

85 [14.] **13.** The commission shall pay a reasonable stipend to prequalified responsive  
86 design-builders who submit a proposal, but are not awarded the design-build highway project.

87 [15.] **14.** The commission shall comply with the provisions of any act of congress or any  
88 regulations of any federal administrative agency which provides and authorizes the use of federal  
89 funds for highway projects using the design-build process.

90 [16.] **15.** The commission shall promulgate administrative rules to implement this  
91 section or to secure federal funds. Such rules shall be published for comment in the Missouri  
92 Register and shall include prequalification criteria, the make-up of the prequalification review  
93 team, specifications for the design criteria package, the method of advertising, receiving and  
94 evaluating proposals from design-builders, the criteria for awarding the design-build highway  
95 project based on the design criteria package and a separate proposal stating the cost of  
96 construction, and other methods, procedures and criteria necessary to administer this section.

97 [17.] **16.** The commission shall make a status report to the members of the general  
98 assembly and the governor following the award of the design-build project, as an individual  
99 component of the annual report submitted by the commission to the joint transportation oversight  
100 committee in accordance with the provisions of section 21.795, RSMo. The annual report prior  
101 to advertisement of the design-build highway project contracts shall state the goals of the project  
102 in reducing costs and/or the time of completion for the project in comparison to the  
103 design-bid-build method of construction and objective measurements to be utilized in  
104 determining achievement of such goals. Subsequent annual reports shall include: the time  
105 estimated for design and construction of different phases or segments of the project and the  
106 actual time required to complete such work during the period; the amount of each progress  
107 payment to the design-builder during the period and the percentage and a description of the  
108 portion of the project completed regarding such payment; the number and a description of design  
109 change orders issued during the period and the cost of each such change order; upon substantial  
110 and final completion, the total cost of the design-build highway project with a breakdown of  
111 costs for design and construction; and such other measurements as specified by rule. The annual  
112 report immediately after final completion of the project shall state an assessment of the  
113 advantages and disadvantages of the design-build method of contracting for highway and bridge  
114 projects in comparison to the design-bid-build method of contracting and an assessment of  
115 whether the goals of the project in reducing costs and/or the time of completion of the project  
116 were met.

117 [18.] **17.** The commission shall give public notice of a request for qualifications in at  
118 least two public newspapers that are distributed wholly or in part in this state and at least one  
119 construction industry trade publication that is distributed nationally.

120 [19.] **18.** The commission shall publish its cost estimates of the design-build highway  
121 project award and the project completion date along with its public notice of a request for  
122 qualifications of the design-build project.

123 [20.] **19.** If the commission fails to receive at least two responsive submissions from  
124 design-builders considered qualified, submissions shall not be opened and it shall readvertise the  
125 project.

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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