

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 359

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:

1 Section A. Section 227.107, RSMo, is repealed and one new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

4 227.107. 1. Notwithstanding any provision of section
5 227.100 to the contrary, as an alternative to the requirements
6 and procedures specified by sections 227.040 to 227.100, the
7 state highways and transportation commission is authorized to
8 enter into highway design-build project contracts. [The
9 authority granted to the state highways and transportation
10 commission by this section shall be limited to a total of three
11 design-build project contracts. Two design-build projects
12 authorized by this section shall be selected by the highways and
13 transportation commission from 1992 fifteen year plan projects.]
14 The total number of highway design-build project contracts

1 awarded by the commission in any state fiscal year shall not
2 exceed two percent of the total number of all state highway
3 system projects listed in the commission's approved statewide
4 transportation improvement project for that state fiscal year.

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

8 2. Notwithstanding provisions of subsection 1 of this
9 section to the contrary, the state highways and transportation
10 commission is authorized to enter into additional design-build
11 contracts for the design, construction, reconstruction, or
12 improvement of Missouri Route 364 as contained in any county with
13 a charter form of government and with more than two hundred fifty
14 thousand but fewer than three hundred fifty thousand inhabitants
15 and in any county with a charter form of government and with more
16 than one million inhabitants, and the State Highway 169 and 96th
17 Street intersection located within a home rule city with more
18 than four hundred thousand inhabitants and located in more than
19 one county. The authority to enter into a design-build highway
20 project under this subsection shall not be subject to the time
21 limitation expressed in subsection 1 of this section.

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

27 [3.] 4. For the purpose of this section, "design-build
28 highway project contract" is defined as the procurement of all

1 materials and services necessary for the design, construction,
2 reconstruction or improvement of a state highway project in a
3 single contract with a design-builder capable of providing the
4 necessary materials and services.

5 [4.] 5. For the purpose of this section, "highway project"
6 is defined as the design, construction, reconstruction or
7 improvement of highways or bridges under contract with the state
8 highways and transportation commission, which is funded by state,
9 federal or local funds or any combination of such funds.

10 [5.] 6. In using a design-build highway project contract,
11 the commission shall establish a written procedure by rule for
12 prequalifying design-builders before such design-builders will be
13 allowed to make a proposal on the project.

14 [6.] 7. In any design-build highway project contract,
15 whether involving state or federal funds, the commission shall
16 require that each person submitting a request for qualifications
17 provide a detailed disadvantaged business enterprise
18 participation plan. The plan shall provide information
19 describing the experience of the person in meeting disadvantaged
20 business enterprise participation goals, how the person will meet
21 the department of transportation's disadvantaged business
22 enterprise participation goal and such other qualifications that
23 the commission considers to be in the best interest of the state.

24 [7.] 8. The commission is authorized to issue a request for
25 proposals to a maximum of five design-builders prequalified in
26 accordance with subsection 5 of this section.

27 [8.] 9. The commission may require approval of any person
28 performing subcontract work on the design-build highway project.

1 [9. The bid bond and performance bond requirements of
2 section 227.100 and the payment bond requirements of section
3 107.170, RSMo, shall apply to the design-build highway project.

4 10. The requirements of subsection 9 of this section may be
5 modified by the commission for any design-build highway project
6 contract which is designated by the commission as a
7 "design-build-finance-maintain" project, and for which the
8 contract with the design-builder exceeds twenty-five years. For
9 such projects,] 10. Notwithstanding the provisions of sections
10 107.170, RSMo, and 227.100, to the contrary, the commission shall
11 require the design-builder to provide[, or cause to be provided
12 by the construction entity or entities providing construction
13 services under contract] to the [design-builder] commission
14 directly, such bid, performance and payment bonds, or such [other
15 security] letters of credit, in such terms, durations, [and]
16 amounts, and on such forms as the commission may determine to be
17 adequate for its protection and provided by a surety[, sureties,
18 or financial institution or institutions satisfactory to the
19 commission] or sureties authorized to conduct surety business in
20 the state of Missouri or a federally insured financial
21 institution or institutions, satisfactory to the commission,
22 including but not limited to:

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

27 (2) A performance bond or bonds for the construction period
28 specified in the design-build highway project contract [in an

1 aggregate amount of not less than two hundred million dollars or
2 twenty-five percent of a reasonable estimate of the cost of
3 construction work, whichever amount is lower, except the
4 commission may allow other security in lieu of or in addition to
5 any bond or bonds, including but not limited to letters of credit
6 or other negotiable instruments, such other or additional
7 security to be on such terms, for such durations, and in such
8 amounts as the commission may determine to be adequate for the
9 protection of the commission, and to be provided by sureties or
10 financial institutions satisfactory to the commission] equal to a
11 reasonable estimate of the total cost of construction work under
12 the terms of the design-build highway project contract. If the
13 commission determines in writing supported by specific findings
14 that the reasonable estimate of the total cost of construction
15 work under the terms of the design-build highway project contract
16 is expected to exceed two-hundred and fifty million dollars and a
17 performance bond or bonds in such amount is impractical, the
18 commission shall set the performance bond or bonds at the largest
19 amount reasonably available, but not less than two-hundred and
20 fifty million dollars, and may require additional security,
21 including but not limited to letters of credit, for the balance
22 of the estimate not covered by the performance bond or bonds;
23 [and]

24 (3) A payment bond or bonds that shall be enforceable under
25 section 522.300, RSMo, for the protection of persons supplying
26 labor and material in carrying out the construction work provided
27 for in the design-build highway project contract. The aggregate
28 amount of the payment bond or bonds shall equal a reasonable

1 estimate of the total amount payable for the cost of construction
2 work under the terms of the design-build highway project contract
3 unless the commission determines in writing supported by specific
4 findings that a payment bond or bonds in such amount is
5 impractical, in which case the commission shall establish the
6 amount of the payment bond or bonds; except that the amount of
7 the payment bond or bonds shall not be less than the aggregate
8 amount of the performance bond or bonds and [the] any additional
9 security to such performance bond or bonds[, or in the amount of
10 the other security used in lieu of the performance bond or
11 bonds]; and

12 (4) Upon award of the design-build highway project
13 contract, the sum of the performance bond and any required
14 additional security established under subdivisions (2) and (3) of
15 this subsection shall be stated, and shall be a matter of public
16 record.

17 11. The commission is authorized to prescribe the form of
18 the contracts for the work.

19 12. The commission is empowered to make all final decisions
20 concerning the performance of the work under the design-build
21 highway project contract, including claims for additional time
22 and compensation.

23 13. The provisions of sections 8.285 to 8.291, RSMo, shall
24 not apply to the procurement of architectural, engineering or
25 land surveying services for the design-build highway project,
26 except that any person providing architectural, engineering or
27 land surveying services for the design-builder on the
28 design-build highway project must be licensed in Missouri to

1 provide such services.

2 14. The commission shall pay a reasonable stipend to
3 prequalified responsive design-builders who submit a proposal,
4 but are not awarded the design-build highway project.

5 15. The commission shall comply with the provisions of any
6 act of congress or any regulations of any federal administrative
7 agency which provides and authorizes the use of federal funds for
8 highway projects using the design-build process.

9 16. The commission shall promulgate administrative rules to
10 implement this section or to secure federal funds. Such rules
11 shall be published for comment in the Missouri Register and shall
12 include prequalification criteria, the make-up of the
13 prequalification review team, specifications for the design
14 criteria package, the method of advertising, receiving and
15 evaluating proposals from design-builders, the criteria for
16 awarding the design-build highway project based on the design
17 criteria package and a separate proposal stating the cost of
18 construction, and other methods, procedures and criteria
19 necessary to administer this section.

20 17. The commission shall make a status report to the
21 members of the general assembly and the governor following the
22 award of the design-build project, as an individual component of
23 the annual report submitted by the commission to the joint
24 transportation oversight committee in accordance with the
25 provisions of section 21.795, RSMo. The annual report prior to
26 advertisement of the design-build highway project contracts shall
27 state the goals of the project in reducing costs and/or the time
28 of completion for the project in comparison to the

1 design-bid-build method of construction and objective
2 measurements to be utilized in determining achievement of such
3 goals. Subsequent annual reports shall include: the time
4 estimated for design and construction of different phases or
5 segments of the project and the actual time required to complete
6 such work during the period; the amount of each progress payment
7 to the design-builder during the period and the percentage and a
8 description of the portion of the project completed regarding
9 such payment; the number and a description of design change
10 orders issued during the period and the cost of each such change
11 order; upon substantial and final completion, the total cost of
12 the design-build highway project with a breakdown of costs for
13 design and construction; and such other measurements as specified
14 by rule. The annual report immediately after final completion of
15 the project shall state an assessment of the advantages and
16 disadvantages of the design-build method of contracting for
17 highway and bridge projects in comparison to the design-bid-build
18 method of contracting and an assessment of whether the goals of
19 the project in reducing costs and/or the time of completion of
20 the project were met.

21 18. The commission shall give public notice of a request
22 for qualifications in at least two public newspapers that are
23 distributed wholly or in part in this state and at least one
24 construction industry trade publication that is distributed
25 nationally.

26 19. The commission shall publish its cost estimates of the
27 design-build highway project award and the project completion
28 date along with its public notice of a request for qualifications

1 of the design-build project.

2 20. If the commission fails to receive at least two
3 responsive submissions from design-builders considered qualified,
4 submissions shall not be opened and it shall readvertise the
5 project.

6 21. For any highway design-build project constructed under
7 this section, the commission shall negotiate and reach agreements
8 with affected railroads. Such agreements shall include
9 clearance, safety, insurance, and indemnification provisions, but
10 are not required to include provisions on right of way
11 acquisitions.

12 Section B. Because Congress is considering enactment of an
13 economic stimulus bill that appropriates additional federal-aid
14 highway funds to all states, including Missouri, which must be
15 committed for additional state highway system projects within the
16 expedited time frame specified in the economic stimulus bill,
17 immediate action is necessary to ensure that the state of
18 Missouri, through the Missouri highways and transportation
19 commission, has design-build authority to meet the highway
20 project construction start date requirements, section A of this
21 act is deemed necessary for the immediate preservation of the
22 public health, welfare, peace and safety, and is hereby declared
23 to be an emergency act within the meaning of the constitution,
24 and section A of this act shall be in full force and effect upon
25 its passage and approval.