

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 359

95TH GENERAL ASSEMBLY

1170S.06T

2009

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:

Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows: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.] **The total number of highway design-build project contracts awarded by the commission in any state fiscal year shall not exceed two percent of the total number of all state highway system projects listed in the commission's approved statewide transportation improvement project for that state fiscal year.** 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.

13 **2. Notwithstanding provisions of subsection 1 of this section to the contrary, the**
14 **state highways and transportation commission is authorized to enter into additional**
15 **design-build contracts for the design, construction, reconstruction, or improvement of**
16 **Missouri Route 364 as contained in any county with a charter form of government and**
17 **with more than two hundred fifty thousand but fewer than three hundred fifty thousand**
18 **inhabitants and in any county with a charter form of government and with more than one**
19 **million inhabitants, and the State Highway 169 and 96th Street intersection located within**
20 **a home rule city with more than four hundred thousand inhabitants and located in more**
21 **than one county. The state highways and transportation commission is authorized to enter**
22 **into an additional design-build contract for the design, construction, reconstruction, or**
23 **improvement of State Highway 92, contained in a county of the first classification with**
24 **more than one hundred eighty-four thousand but fewer than one hundred eighty-eight**
25 **thousand inhabitants, from its intersection with State Highway 169, east to its intersection**
26 **with State Highway E. The authority to enter into a design-build highway project under**
27 **this subsection shall not be subject to the time limitation expressed in subsection 1 of this**
28 **section.**

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

32 **[3.] 4.** For the purpose of this section, "design-build highway project contract" is defined
33 as the procurement of all materials and services necessary for the design, construction,
34 reconstruction or improvement of a state highway project in a single contract with a
35 design-builder capable of providing the necessary materials and services.

36 **[4.] 5.** For the purpose of this section, "highway project" is defined as the design,
37 construction, reconstruction or improvement of highways or bridges under contract with the state
38 highways and transportation commission, which is funded by state, federal or local funds or any
39 combination of such funds.

40 **[5.] 6.** In using a design-build highway project contract, the commission shall establish
41 a written procedure by rule for prequalifying design-builders before such design-builders will be
42 allowed to make a proposal on the project.

43 **[6.] 7.** In any design-build highway project contract, whether involving state or federal
44 funds, the commission shall require that each person submitting a request for qualifications
45 provide a detailed disadvantaged business enterprise participation plan. The plan shall provide
46 information describing the experience of the person in meeting disadvantaged business enterprise
47 participation goals, how the person will meet the department of transportation's disadvantaged

48 business enterprise participation goal and such other qualifications that the commission considers
49 to be in the best interest of the state.

50 [7.] **8.** The commission is authorized to issue a request for proposals to a maximum of
51 five design-builders prequalified in accordance with subsection 5 of this section.

52 [8.] **9.** The commission may require approval of any person performing subcontract work
53 on the design-build highway project.

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

57 10. The requirements of subsection 9 of this section may be modified by the commission
58 for any design-build highway project contract which is designated by the commission as a
59 "design-build-finance-maintain" project, and for which the contract with the design-builder
60 exceeds twenty-five years. For such projects,] **10. Notwithstanding the provisions of sections**
61 **107.170, RSMo, and 227.100, to the contrary,** the commission shall require the design-builder
62 to provide[, or cause to be provided by the construction entity or entities providing construction
63 services under contract] to the [design-builder] **commission** directly, such **bid, performance**
64 **and payment** bonds, or such [other security] **letters of credit**, in such terms, durations, [and]
65 amounts, **and on such forms** as the commission may determine to be adequate for its protection
66 and provided by a surety[, sureties, or financial institution or institutions satisfactory to the
67 commission] **or sureties authorized to conduct surety business in the state of Missouri or**
68 **a federally insured financial institution or institutions, satisfactory to the commission,**
69 including but not limited to:

70 (1) A bid or proposal bond, [or other security authorized under subsection 2 of section
71 227.100, in an amount of not less than five million dollars] **cash or a certified or cashier's**
72 **check;**

73 (2) A performance bond or bonds for the construction period specified in the
74 design-build highway project contract [in an aggregate amount of not less than two hundred
75 million dollars or twenty-five percent of a reasonable estimate of the cost of construction work,
76 whichever amount is lower, except the commission may allow other security in lieu of or in
77 addition to any bond or bonds, including but not limited to letters of credit or other negotiable
78 instruments, such other or additional security to be on such terms, for such durations, and in such
79 amounts as the commission may determine to be adequate for the protection of the commission,
80 and to be provided by sureties or financial institutions satisfactory to the commission] **equal to**
81 **a reasonable estimate of the total cost of construction work under the terms of the design-**
82 **build highway project contract. If the commission determines in writing supported by**
83 **specific findings that the reasonable estimate of the total cost of construction work under**

84 **the terms of the design-build highway project contract is expected to exceed two-hundred**
85 **and fifty million dollars and a performance bond or bonds in such amount is impractical,**
86 **the commission shall set the performance bond or bonds at the largest amount reasonably**
87 **available, but not less than two-hundred and fifty million dollars, and may require**
88 **additional security, including but not limited to letters of credit, for the balance of the**
89 **estimate not covered by the performance bond or bonds; [and]**

90 (3) A payment bond or bonds that shall be enforceable under section 522.300, RSMo,
91 for the protection of persons supplying labor and material in carrying out the construction work
92 provided for in the design-build highway project contract. The aggregate amount of the payment
93 bond or bonds shall equal a reasonable estimate of the total amount payable for the cost of
94 construction work under the terms of the design-build highway project contract unless the
95 commission determines in writing supported by specific findings that a payment bond or bonds
96 in such amount is impractical, in which case the commission shall establish the amount of the
97 payment bond or bonds; except that the amount of the payment bond or bonds shall not be less
98 than the aggregate amount of the performance bond or bonds and [the] **any** additional security
99 to such performance bond or bonds[, or in the amount of the other security used in lieu of the
100 performance bond or bonds] ; **and**

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

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

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

108 13. The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the procurement
109 of architectural, engineering or land surveying services for the design-build highway project,
110 except that any person providing architectural, engineering or land surveying services for the
111 design-builder on the design-build highway project must be licensed in Missouri to provide such
112 services.

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

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

118 16. The commission shall promulgate administrative rules to implement this section or
119 to secure federal funds. Such rules shall be published for comment in the Missouri Register and

120 shall include prequalification criteria, the make-up of the prequalification review team,
121 specifications for the design criteria package, the method of advertising, receiving and evaluating
122 proposals from design-builders, the criteria for awarding the design-build highway project based
123 on the design criteria package and a separate proposal stating the cost of construction, and other
124 methods, procedures and criteria necessary to administer this section.

125 17. The commission shall make a status report to the members of the general assembly
126 and the governor following the award of the design-build project, as an individual component
127 of the annual report submitted by the commission to the joint transportation oversight committee
128 in accordance with the provisions of section 21.795, RSMo. The annual report prior to
129 advertisement of the design-build highway project contracts shall state the goals of the project
130 in reducing costs and/or the time of completion for the project in comparison to the
131 design-bid-build method of construction and objective measurements to be utilized in
132 determining achievement of such goals. Subsequent annual reports shall include: the time
133 estimated for design and construction of different phases or segments of the project and the
134 actual time required to complete such work during the period; the amount of each progress
135 payment to the design-builder during the period and the percentage and a description of the
136 portion of the project completed regarding such payment; the number and a description of design
137 change orders issued during the period and the cost of each such change order; upon substantial
138 and final completion, the total cost of the design-build highway project with a breakdown of
139 costs for design and construction; and such other measurements as specified by rule. The annual
140 report immediately after final completion of the project shall state an assessment of the
141 advantages and disadvantages of the design-build method of contracting for highway and bridge
142 projects in comparison to the design-bid-build method of contracting and an assessment of
143 whether the goals of the project in reducing costs and/or the time of completion of the project
144 were met.

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

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

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

154 **21. For any highway design-build project constructed under this section, the**
155 **commission shall negotiate and reach agreements with affected railroads. Such agreements**

156 **shall include clearance, safety, insurance, and indemnification provisions, but are not**
157 **required to include provisions on right of way acquisitions.**

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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