

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 725,
2 Page 45, Section 485.060, Line 23, by inserting after all of said section and line the following:

3
4 "537.033. 1. As used in this section, unless the context clearly indicates otherwise, the
5 following words and terms shall have the meanings indicated:

6 (1) "Design professional", an architect, landscape architect, professional land surveyor, or
7 professional engineer licensed under the provisions of chapter 327 or any corporation authorized to
8 practice architecture, landscape architecture, land surveying, or engineering under section 327.401
9 while acting within their scope of practice;

10 (2) "Lessons learned", internal meetings, classes, publications in any medium, presentations,
11 lectures, or other means of teaching and communicating after substantial completion of the project
12 which are conducted solely and exclusively by and with the employees, partners, and coworkers of
13 the design professional who prepared the project's design for the purpose of learning best practices
14 and reducing errors and omissions in design documents and procedures. Lessons learned shall not
15 include presentations, lectures, teaching, or communication made to or by third parties who are not
16 employees, partners, and coworkers of the design professional whose work is being evaluated and
17 discussed;

18 (3) "Peer review process", a process through which design professionals evaluate, maintain,
19 or monitor the quality and utilization of architectural, landscape architectural, land surveying, or
20 engineering services, prepare internal lessons learned, or exercise any combination of such
21 responsibilities;

22 (4) "Substantial completion", the construction of the project covered by the design
23 professional's design documents has reached substantial completion, as that term is defined in
24 section 436.327.

25 2. A peer review process shall only be performed by a design professional licensed in any
26 jurisdiction in the United States in the same profession as would be required under chapter 327 to
27 prepare the design documents being reviewed, or in a case requiring multiple professions, by a
28 person or persons holding the proper licenses. A peer review process may be performed by one or
29 more design professionals appointed by the partners, shareholders, board of directors, chief
30 executive officer, quality control director, or employed design professionals of a partnership or of a
31 corporation authorized under section 327.401 to practice architecture, landscape architecture, land

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1 surveying, or engineering, or by the owner of a sole proprietorship engaged in one or more of such
2 professions. Any individual identified in this subsection and performing a peer review shall be
3 deemed a peer reviewer.

4 3. Each peer reviewer described in this subsection shall be immune from civil liability for
5 such acts so long as the acts are performed in good faith, without malice, and are reasonably related
6 to the scope of inquiry of the peer review process. The immunity in this subsection is intended to
7 cover only outside peer reviews by a third-party design professional who is not an employee,
8 coworker, or partner of the design professional whose design is being peer reviewed before
9 substantial completion of the project and who has no other role in the project besides performing the
10 peer review.

11 4. This section does not provide immunity to any in-house peer reviewer when performed
12 by employees, coworkers, or partners of the design professional who prepares the design, nor are
13 any such documents or peer review comments, other than lessons learned, inadmissible into
14 evidence in any judicial or administrative action.

15 5. Except for documents related to lessons learned, the interviews, memoranda, proceedings,
16 findings, deliberations, reports, and minutes of the peer review process, or the existence of the same,
17 concerning the professional services provided to a client or member of the public are subject to
18 discovery, subpoena, or other means of legal compulsion for their release to any person or entity and
19 shall be admissible into evidence in any judicial or administrative action for failure to provide
20 appropriate architectural, landscape architectural, land surveying, or engineering services, subject to
21 applicable rules of the court or tribunal. Except as otherwise provided in this section, no person
22 who was in attendance at, or participated in, any lessons learned process or proceedings shall be
23 permitted or required to disclose any information acquired in connection with or in the course of
24 such proceeding, or to disclose any opinion, recommendation, or evaluation made in a lessons
25 learned process or proceeding; provided, however, that information otherwise discoverable or
26 admissible from original sources is not to be construed as immune from discovery or use in any
27 proceeding merely because it was presented during a lessons learned process or proceeding nor is a
28 member, employee, or agent involved in any such process or proceeding, or other person appearing
29 before a peer reviewer, to be prevented from testifying as to matters within his or her personal
30 knowledge and in accordance with the other provisions of this section, but such witness cannot be
31 questioned about a lessons learned process or proceeding or about opinions formed as a result of
32 such process or proceeding. The disclosure of any memoranda, proceedings, reports, or minutes of
33 a lessons learned proceeding to any person or entity, including but not limited to governmental
34 agencies, professional accrediting agencies, or other design professionals, whether proper or
35 improper, shall not waive or have any effect upon its confidentiality, nondiscoverability, or
36 nonadmissibility.

37 6. Nothing in this section shall limit authority otherwise provided by law of the Missouri
38 board for architects, professional engineers, professional land surveyors, and landscape architects to
39 obtain information by subpoena or other authorized process from a peer reviewer or to require
40 disclosure of otherwise confidential information relating to matters and investigations within the
41 jurisdiction of such licensing board.

1 [7. The provisions of this section shall expire on January 1, 2023, unless reauthorized by an
2 act of the general assembly. The provisions of this section shall continue to apply to peer reviews
3 and lessons learned proceedings performed prior to the expiration date of this section.]; and
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5 Further amend said bill by amending the title, enacting clause, and intersectional references
6 accordingly.