

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 938

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time January 23, 2006, and ordered printed.

Read 2nd time January 26, 2006, and referred to the Committee on Transportation.

Reported from the Committee February 23, 2006, with recommendation that the bill do pass.

Taken up for Perfection March 29, 2006. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

4349S.01P

AN ACT

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

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
2 new sections, to be known as sections 227.600, 227.603, 227.606, 227.609,
3 227.612, 227.615, 227.618, 227.621, 227.624, 227.627, 227.630, 227.633, 227.636,
4 227.639, 227.642, 227.645, 227.648, 227.651, 227.654, 227.657, 227.660, 227.663,
5 227.666, and 227.669, to read as follows:

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

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

6 (1) "Commission", the Missouri highways and transportation
7 commission;

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

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

13 (4) "Develop" or "development", to plan, locate, relocate, establish,
14 acquire, lease, design, or construct;

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

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

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

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

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

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

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

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

43 (a) Income;

44 (b) Earnings;

45 (c) Proceeds;

46 (d) User fees;

47 (e) Lease payments;

48 (f) Allocations;

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

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

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

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

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

227.603. 1. The general assembly finds that:

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

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

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

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

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

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

8 2. The commission shall publish a public notice of the

9 commission's request for proposals, including any deadline for
10 submission of such proposals. The notice shall be published once a
11 week for two consecutive weeks in:

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

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

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

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

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

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

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

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

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

11 (3) Other criteria that the commission deems appropriate.

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

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

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

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

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

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

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

13 **(3) A final financing plan, contingent upon review and approval**
14 **by the commission; and**

15 **(4) Any other provisions the commission and private partner**
16 **deem appropriate.**

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

227.627. All information of any kind submitted by a potential
2 **private partner to the commission under a request for approval as**
3 **provided in section 227.606 or under a response to a request for**

4 proposal as provided in section 227.609 shall be a closed record under
5 chapter 610, RSMo; provided that, after the private partner and the
6 commission execute the comprehensive agreement information
7 provided by the private partner, the interim agreement and the
8 comprehensive agreement shall be an open record under chapter 610,
9 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
3 political subdivisions, the commission, a local or regional
4 transportation authority, a corporation, a partnership, or any person
5 to finance, develop, and/or operate the project;

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

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

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

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

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

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

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

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

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

16 (a) Commercial general liability insurance for all damages and

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

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

30 2. Notwithstanding the provisions of section 107.170, RSMo, and
31 section 227.100 to the contrary, a bid bond shall not be required for the
32 project; except that, the commission may require the private partner
33 to provide such other bonds in such amounts determined by the
34 commission to be adequate for the protection of the commission and
35 provided by a surety or sureties satisfactory to the commission,
36 including but not limited to:

37 (1) A performance bond;

38 (2) A payment bond for the protection of all persons supplying
39 labor and material in carrying out the work provided for in the
40 comprehensive agreement for the project. The amount of the payment
41 bond shall equal the total amount payable under the terms of the
42 comprehensive agreement unless the commission determines in writing
43 supported by specific findings that a payment bond in such amount is
44 impractical, in which case the commission shall establish the amount
45 of the payment bond; except that, the amount of the payment bond shall
46 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
3 227.600 to 227.669 to the department to carry out the purposes of
4 sections 227.600 to 227.669;

5 (2) Promulgate rules to implement the provisions of sections
6 227.600 to 227.669. Any rule or portion of a rule, as that term is defined
7 in section 536.010, RSMo, that is created under the authority delegated

8 in this section shall become effective only if it complies with and is
9 subject to all of the provisions of chapter 536, RSMo, and, if applicable,
10 section 536.028, RSMo. This section and chapter 536, RSMo, are
11 nonseverable and if any of the powers vested with the general assembly
12 pursuant to chapter 536, RSMo, to review, to delay the effective date,
13 or to disapprove and annul a rule are subsequently held
14 unconstitutional, then the grant of rulemaking authority and any rule
15 proposed or adopted after August 28, 2006, shall be invalid and void;
16 and

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

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

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

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

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

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

31 3. The private partner may also contract with the commission for
32 the commission to issue state road bonds for the project and to loan the
33 proceeds thereof to the private partner.

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

5 (1) Use any project delivery method for the efficient development
6 and/or operation of the project. Such project delivery methods shall
7 include but are not limited to project delivery methods established in
8 section 8.285, RSMo, or sections 227.100 and 227.107. In addition, the
9 limitation in subsection 1 of section 227.107 on the number of design-
10 build contracts authorized to be let by the commission shall not apply
11 to the project;

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

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

227.651. The private partner shall provide the commission a
2 detailed disadvantaged business enterprise participation plan that
3 conforms to commission reporting requirements for the federal
4 disadvantaged business enterprise program under federal law and
5 regulations on federal-aid highway projects. The plan shall also
6 provide information describing the experience of the private partner
7 in meeting disadvantaged business enterprise participation goals, how
8 the private partner will meet the departments disadvantaged business
9 participation goals, and such other qualifications the commission
10 considers to be in the best interest of the state.

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

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

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

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

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

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

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

17 3. The owner of a motor vehicle involved in a violation for
18 failure to pay the required toll is guilty of an infraction and upon
19 conviction shall be required to pay the amount of the toll that was the
20 subject of the violation which shall be remitted to the private partner
21 and a fine in an amount not to exceed two hundred dollars.

22 4. A written report or telephone call from a toll enforcement
23 officer, law enforcement officer, or photo monitoring system evidence
24 that indicates a required toll was not paid is admissible in any
25 proceeding to enforce this section, subject to foundation evidence to
26 establish the authenticity of the report, call, or photographs. Photo
27 monitoring system evidence that shows the motor vehicle, whether
28 operated by the owner or another operator, has failed to pay a toll shall
29 raise a rebuttable presumption that the motor vehicle shown in the
30 photographic evidence was used to commit a violation of this section.
31 If charges are filed against multiple owners of a motor vehicle, only one
32 of the owners shall be convicted and court costs may be assessed

33 against only one of the owners. If the motor vehicle involved in the
34 violation is registered in the name of a rental or leasing company and
35 the vehicle is rented or leased to another person at the time of the
36 violation, the rental or leasing company may rebut the presumption by
37 providing law enforcement or the prosecuting authority with a copy of
38 the rental or lease agreement in effect at the time of the violation. No
39 prosecuting authority shall bring any legal proceeding against a rental
40 or leasing company under this section unless prior written notice of the
41 violation has been given to such rental or leasing company by
42 registered mail at the address appearing on the motor vehicle's
43 registration and the rental or leasing company has failed to provide the
44 rental or leasing agreement copy within fifteen days of receipt of such
45 notice.

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

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

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

57 (b) A certificate or a written report sworn to or affirmed by a toll
58 enforcement officer, agent, private partner, Missouri state highway
59 patrol officer, city police officer, or a sheriff's department deputy
60 which alleges that a violation of this section occurred, or a facsimile
61 thereof, based upon inspection of photographs, microphotographs,
62 videotape, or other recorded images produced by a photo monitoring
63 system or a photograph from a photo monitoring system shall be prima
64 facie evidence of the facts contained therein, subject to foundation
65 evidence to establish the authenticity of such photographs,
66 microphotographs, videotape, or other recorded images produced by a
67 photo monitoring system, and shall be admissible in any proceeding
68 charging a violation of the toll collection provisions in this section;
69 provided that, any photographs, microphotographs, videotape, or other

70 recorded images evidencing such a violation shall be available for
71 inspection and admission into evidence in any proceeding to adjudicate
72 the liability for such violation;

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

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

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

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

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

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

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

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

11 (2) By notice to the private partner by certified mail, terminate

12 the comprehensive agreement and exercise any other rights and
13 remedies which may be available to the commission at law or in equity;

14 (3) Condemn under chapter 523, RSMo, any real property interest
15 of the private partner in the project. Any person who provides
16 financing for the project, to the extent of such person's capital
17 investment, may participate in the condemnation proceedings with
18 standing of a property owner;

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

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

Bill ✓

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