

FIRST EXTRAORDINARY SESSION

SENATE BILL NO. 1

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time August 20, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2829S.02I

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 state highway project bond requirements, 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Section A. Section 227.107, RSMo, is repealed and one new section
2 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
2 contrary, as an alternative to the requirements and procedures specified by
3 sections 227.040 to 227.100, the state highways and transportation commission
4 is authorized to enter into highway design-build project contracts. The authority
5 granted to the state highways and transportation commission by this section shall
6 be limited to a total of three design-build project contracts. Two design-build
7 projects authorized by this section shall be selected by the highways and
8 transportation commission from 1992 fifteen year plan projects. Authority to
9 enter into design-build projects granted by this section shall expire on July 1,
10 2012, unless extended by statute or upon completion of three projects, whichever
11 is first.

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

16 3. For the purpose of this section, "design-build highway project contract"
17 is defined as the procurement of all materials and services necessary for the
18 design, construction, reconstruction or improvement of a state highway project in

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 a single contract with a design-builder capable of providing the necessary
20 materials and services.

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

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

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

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

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

41 9. The bid bond and performance bond requirements of section 227.100
42 and the payment bond requirements of section 107.170, RSMo, shall apply to the
43 design-build highway project.

44 **10. The requirements of subsection 9 of this section may be**
45 **modified by the commission for any design-build highway project**
46 **contract which is designated by the commission as a "design-build-**
47 **finance-maintain" project, and for which the contract with the design-**
48 **builder exceeds twenty-five years. For such projects, the commission**
49 **shall require the design-builder to provide, or cause to be provided by**
50 **the construction entity or entities providing construction services**
51 **under contract to the design-builder directly, such bonds, or such other**
52 **security, in such terms, durations, and amounts as the commission may**
53 **determine to be adequate for its protection and provided by a surety,**
54 **sureties, or financial institution or institutions satisfactory to the**

55 **commission, including but not limited to:**

56 **(1) A bid or proposal bond, or other security authorized under**
57 **subsection 2 of section 227.100, in an amount of not less than five**
58 **million dollars;**

59 **(2) A performance bond or bonds for the construction period**
60 **specified in the design-build highway project contract in an aggregate**
61 **amount of not less than two hundred million dollars or twenty-five**
62 **percent of a reasonable estimate of the cost of construction work,**
63 **whichever amount is lower, except the commission may allow other**
64 **security in lieu of or in addition to any bond or bonds, including but**
65 **not limited to letters of credit or other negotiable instruments, such**
66 **other or additional security to be on such terms, for such durations,**
67 **and in such amounts as the commission may determine to be adequate**
68 **for the protection of the commission, and to be provided by sureties or**
69 **financial institutions satisfactory to the commission; and**

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

84 **11. The commission is authorized to prescribe the form of the contracts**
85 **for the work.**

86 **[11.] 12. The commission is empowered to make all final decisions**
87 **concerning the performance of the work under the design-build highway project**
88 **contract, including claims for additional time and compensation.**

89 **[12.] 13. The provisions of sections 8.285 to 8.291, RSMo, shall not apply**
90 **to the procurement of architectural, engineering or land surveying services for the**
91 **design-build highway project, except that any person providing architectural,**

92 engineering or land surveying services for the design-builder on the design-build
93 highway project must be licensed in Missouri to provide such services.

94 [13.] 14. The commission shall pay a reasonable stipend to prequalified
95 responsive design-builders who submit a proposal, but are not awarded the
96 design-build highway project.

97 [14.] 15. The commission shall comply with the provisions of any act of
98 congress or any regulations of any federal administrative agency which provides
99 and authorizes the use of federal funds for highway projects using the design-
100 build process.

101 [15.] 16. The commission shall promulgate administrative rules to
102 implement this section or to secure federal funds. Such rules shall be published
103 for comment in the Missouri Register and shall include prequalification criteria,
104 the make-up of the prequalification review team, specifications for the design
105 criteria package, the method of advertising, receiving and evaluating proposals
106 from design-builders, the criteria for awarding the design-build highway project
107 based on the design criteria package and a separate proposal stating the cost of
108 construction, and other methods, procedures and criteria necessary to administer
109 this section.

110 [16.] 17. The commission shall make a status report to the members of
111 the general assembly and the governor following the award of the design-build
112 project, as an individual component of the annual report submitted by the
113 commission to the joint transportation oversight committee in accordance with the
114 provisions of section 21.795, RSMo. The annual report prior to advertisement of
115 the design-build highway project contracts shall state the goals of the project in
116 reducing costs and/or the time of completion for the project in comparison to the
117 design-bid-build method of construction and objective measurements to be utilized
118 in determining achievement of such goals. Subsequent annual reports shall
119 include: the time estimated for design and construction of different phases or
120 segments of the project and the actual time required to complete such work
121 during the period; the amount of each progress payment to the design-builder
122 during the period and the percentage and a description of the portion of the
123 project completed regarding such payment; the number and a description of
124 design change orders issued during the period and the cost of each such change
125 order; upon substantial and final completion, the total cost of the design-build
126 highway project with a breakdown of costs for design and construction; and such
127 other measurements as specified by rule. The annual report immediately after

128 final completion of the project shall state an assessment of the advantages and
129 disadvantages of the design-build method of contracting for highway and bridge
130 projects in comparison to the design-bid-build method of contracting and an
131 assessment of whether the goals of the project in reducing costs and/or the time
132 of completion of the project were met.

133 [17.] 18. The commission shall give public notice of a request for
134 qualifications in at least two public newspapers that are distributed wholly or in
135 part in this state and at least one construction industry trade publication that is
136 distributed nationally.

137 [18.] 19. The commission shall publish its cost estimates of the design-
138 build highway project award and the project completion date along with its public
139 notice of a request for qualifications of the design-build project.

140 [19.] 20. If the commission fails to receive at least two responsive
141 submissions from design-builders considered qualified, submissions shall not be
142 opened and it shall readvertise the project.

Section B. Because of the need to protect Missouri taxpayers in case a
2 contractor abandons a project and because modifying Missouri's bonding
3 requirements will help expedite the process of replacing and repairing Missouri's
4 structurally deficient bridges, section A of this act is deemed necessary for the
5 immediate preservation of the public health, welfare, peace and safety, and is
6 hereby declared to be an emergency act within the meaning of the constitution,
7 and section A of this act shall be in full force and effect upon its passage and
8 approval.

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