

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1280
96TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, May 10, 2012, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4884S.03C

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to a peer review process for licensed architects, landscape architects, land surveyors, and engineers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.033, to read as follows:

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

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

(2) "Lessons learned", internal meetings, classes, publications in any medium, presentations, lectures, or other means of teaching and communicating with the employees, partners, and coworkers of the design professional who prepared the project's design for the purpose of learning best practices and reducing errors and omissions in design documents and procedures;

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

2. A peer review process shall only be performed by a design

21 professional licensed in any jurisdiction in the United States in the
22 same profession as would be required under chapter 327 to prepare the
23 design documents being reviewed, or in a case requiring multiple
24 professions, by a person or persons holding the proper licenses. A peer
25 review process may be performed by one or more design professionals
26 appointed by the partners, shareholders, board of directors, chief
27 executive officer, quality control director, or employed design
28 professionals of a partnership or of a corporation authorized under
29 section 327.401 to practice architecture, landscape architecture, land
30 surveying, or engineering, or by the owner of a sole proprietorship
31 engaged in one or more of such professions. Any individual identified
32 in this subsection and performing a peer review shall be deemed a peer
33 reviewer.

34 3. Each peer reviewer described in this subsection shall be
35 immune from civil liability for such acts so long as the acts are
36 performed in good faith, without malice, and are reasonably related to
37 the scope of inquiry of the peer review process. The immunity in this
38 subsection is intended to cover only outside peer reviews by a third-
39 party design professional who is not an employee, coworker, or partner
40 of the design professional whose design is being peer reviewed before
41 substantial completion of the project as the term "substantial
42 completion" is defined in section 436.327 and who has no other role in
43 the project besides performing the peer review.

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

49 5. Except for documents related to lessons learned, the
50 interviews, memoranda, proceedings, findings, deliberations, reports,
51 and minutes of the peer review process, or the existence of the same,
52 concerning the professional services provided to a client or member of
53 the public are subject to discovery, subpoena, or other means of legal
54 compulsion for their release to any person or entity and shall be
55 admissible into evidence in any judicial or administrative action for
56 failure to provide appropriate architectural, landscape architectural,
57 land surveying, or engineering services, subject to applicable rules of

58 the court or tribunal. Except as otherwise provided in this section, no
59 person who was in attendance at, or participated in, any lessons
60 learned process or proceedings shall be permitted or required to
61 disclose any information acquired in connection with or in the course
62 of such proceeding, or to disclose any opinion, recommendation, or
63 evaluation made in a lessons learned process or proceeding; provided,
64 however, that information otherwise discoverable or admissible from
65 original sources is not to be construed as immune from discovery or use
66 in any proceeding merely because it was presented during a lessons
67 learned process or proceeding nor is a member, employee, or agent
68 involved in any such process or proceeding, or other person appearing
69 before a peer reviewer, to be prevented from testifying as to matters
70 within his or her personal knowledge and in accordance with the other
71 provisions of this section, but such witness cannot be questioned about
72 a lessons learned process or proceeding or about opinions formed as a
73 result of such process or proceeding. The disclosure of any
74 memoranda, proceedings, reports, or minutes of a lessons learned
75 proceeding to any person or entity, including but not limited to
76 governmental agencies, professional accrediting agencies, or other
77 design professionals, whether proper or improper, shall not waive or
78 have any effect upon its confidentiality, nondiscoverability, or
79 nonadmissibility.

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

87 7. The provisions of subsection 3 of this section shall expire on
88 January 1, 2023, unless reauthorized by an act of the general
89 assembly. Any immunity granted under subsection 3 of this section for
90 a peer review performed prior to the expiration date shall continue and
91 not be affected by expiration of the subsection. The expiration of
92 subsection 3 of this section shall not affect any other provisions of this
93 section.