

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 173
96TH GENERAL ASSEMBLY

1048L.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 21.920, 227.107, 319.016, and 319.025, RSMo, and to enact in lieu thereof six new sections relating to transportation and infrastructure.

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

Section A. Sections 21.920, 227.107, 319.016, and 319.025, RSMo, are repealed and six
2 new sections enacted in lieu thereof, to be known as sections 21.920, 226.195, 227.107, 249.425,
3 319.016, and 319.025, to read as follows:

21.920. 1. There is established a joint committee of the general assembly to be known
2 as the "Joint Committee on Missouri's Promise" to be composed of five members of the senate
3 and five members of the house of representatives. The senate members of the joint committee
4 shall be appointed by the president pro tem of the senate and the house members shall be
5 appointed by the speaker of the house of representatives. The appointment of each member shall
6 continue during the member's term of office as a member of the general assembly or until a
7 successor has been appointed to fill the member's place when his or her term of office as a
8 member of the general assembly has expired. No party shall be represented by more than three
9 members from the house of representatives nor more than three members from the senate. A
10 majority of the committee shall constitute a quorum, but the concurrence of a majority of the
11 members shall be required for the determination of any matter within the committee's duties.

12 2. The committee shall be charged with the following:

13 (1) Examining issues that will be impacting the future of the state of Missouri and its
14 citizens;

15 (2) Developing long-term strategies and plans for:

16 (a) Increasing the economic prosperity and opportunities for the citizens of this state;

17 (b) Improving the health status of our citizens;

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.

18 (c) An education system that educates students who are capable of attending and being
19 productive and successful citizens and designed to successfully prepare graduates for global
20 competition; [and]

21 (d) **Investing in, and maintaining, a modern infrastructure and transportation**
22 **system and identifying potential sources of revenue to sustain such efforts; and**

23 (e) Other areas that the committee determines are vital to improving the lives of the
24 citizens of Missouri;

25 (3) Developing three-, five-, and ten-year plans for the general assembly to meet the
26 long-term strategies outlined in subdivision (2) of this subsection;

27 (4) Implementing budget forecasting for the upcoming ten years in order to plan for the
28 long-term financial soundness of the state; and

29 (5) Such other matters as the committee may deem necessary in order to determine the
30 proper course of future legislative and budgetary action regarding these issues.

31 3. The committee may solicit input and information necessary to fulfill its obligations,
32 including, but not limited to, soliciting input and information from any state department or
33 agency the committee deems relevant, political subdivisions of this state, and the general public.

34 4. By January 1, 2011, and every year thereafter, the committee shall issue a report to the
35 general assembly with any findings or recommendations of the committee with regard to its
36 duties under subsection 2 of this section.

37 5. Members of the committee shall receive no compensation but may be reimbursed for
38 reasonable and necessary expenses associated with the performance of their official duties.

226.195. 1. As used in this section, the following terms mean:

2 (1) **"Commission", the Missouri highways and transportation commission;**

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

4 (3) **"Public mass transportation service provider", a city, a city transit authority,**
5 **a city utilities board, or an interstate transportation authority as such terms are defined**
6 **in section 94.600, an intrastate transportation authority, or an agency receiving funding**
7 **from either the federal transit administration urban or nonurban formula transit program.**

8 2. **There is hereby created the Missouri state transit assistance program. The**
9 **purpose of this program is to provide state financial assistance to defray the operating and**
10 **capital costs incurred by public mass transportation service providers.**

11 3. **Funds appropriated to the Missouri state transit assistance program shall be**
12 **appropriated to the department and administered by the department on behalf of the**
13 **commission. The distribution of funds to public mass transportation service providers**
14 **shall be determined by evaluating factors including but not limited to the following:**

15 (1) **Population;**

- 16 (2) **Ridership;**
17 (3) **Cost and efficiency of the program;**
18 (4) **Availability of alternative transportation in the area;**
19 (5) **Local effort or tax support.**

20 **4. The commission shall promulgate rules to implement the provisions of this**
21 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
22 **created under the authority delegated in this section shall become effective only if it**
23 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
24 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
25 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
26 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
27 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,**
28 **shall be invalid and void.**

 227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an
2 alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state
3 highways and transportation commission is authorized to enter into highway design-build project
4 contracts. The total number of highway design-build project contracts awarded by the
5 commission in any state fiscal year shall not exceed two percent of the total number of all state
6 highway system projects **awarded to contracts for construction from projects** listed in the
7 commission's approved statewide transportation improvement project for that state fiscal year.
8 Authority to enter into design-build projects granted by this section shall expire on July 1, [2012]
9 **2018**, unless extended by statute.

10 2. Notwithstanding provisions of subsection 1 of this section to the contrary, the state
11 highways and transportation commission is authorized to enter into additional design-build
12 contracts for the design, construction, reconstruction, or improvement of Missouri Route 364 as
13 contained in any county with a charter form of government and with more than two hundred fifty
14 thousand but fewer than three hundred fifty thousand inhabitants and in any county with a charter
15 form of government and with more than one million inhabitants, and the State Highway 169 and
16 96th Street intersection located within a home rule city with more than four hundred thousand
17 inhabitants and located in more than one county. The state highways and transportation
18 commission is authorized to enter into an additional design-build contract for the design,
19 construction, reconstruction, or improvement of State Highway 92, contained in a county of the
20 first classification with more than one hundred eighty-four thousand but fewer than one hundred
21 eighty-eight thousand inhabitants, from its intersection with State Highway 169, east to its
22 intersection with State Highway E. **The state highways and transportation commission is**
23 **authorized to enter into an additional design-build contract for the design, construction,**

24 **reconstruction, or improvement of US 40/61 I-64 Missouri River Bridge as contained in**
25 **any county with a charter form of government and with more than one million inhabitants**
26 **and any county with a charter form of government and with more than two hundred fifty**
27 **thousand but fewer than three hundred fifty thousand inhabitants.** The authority to enter
28 into a design-build highway project under this subsection shall not be subject to the time
29 limitation expressed in subsection 1 of this section.

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

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

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

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

44 7. In any design-build highway project contract, whether involving state or federal funds,
45 the commission shall require that each person submitting a request for qualifications provide a
46 detailed disadvantaged business enterprise participation plan. The plan shall provide information
47 describing the experience of the person in meeting disadvantaged business enterprise
48 participation goals, how the person will meet the department of transportation's disadvantaged
49 business enterprise participation goal and such other qualifications that the commission considers
50 to be in the best interest of the state.

51 8. The commission is authorized to issue a request for proposals to a maximum of five
52 design-builders prequalified in accordance with subsection 6 of this section.

53 9. The commission may require approval of any person performing subcontract work on
54 the design-build highway project.

55 10. Notwithstanding the provisions of sections 107.170, and 227.100, to the contrary,
56 the commission shall require the design-builder to provide to the commission directly such bid,
57 performance and payment bonds, or such letters of credit, in such terms, durations, amounts, and
58 on such forms as the commission may determine to be adequate for its protection and provided
59 by a surety or sureties authorized to conduct surety business in the state of Missouri or a federally

60 insured financial institution or institutions, satisfactory to the commission, including but not
61 limited to:

62 (1) A bid or proposal bond, cash or a certified or cashier's check;

63 (2) A performance bond or bonds for the construction period specified in the
64 design-build highway project contract equal to a reasonable estimate of the total cost of
65 construction work under the terms of the design-build highway project contract. If the
66 commission determines in writing supported by specific findings that the reasonable estimate of
67 the total cost of construction work under the terms of the design-build highway project contract
68 is expected to exceed two-hundred fifty million dollars and a performance bond or bonds in such
69 amount is impractical, the commission shall set the performance bond or bonds at the largest
70 amount reasonably available, but not less than two-hundred fifty million dollars, and may require
71 additional security, including but not limited to letters of credit, for the balance of the estimate
72 not covered by the performance bond or bonds;

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

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

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

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

90 13. The provisions of sections 8.285 to 8.291 shall not apply to the procurement of
91 architectural, engineering or land surveying services for the design-build highway project, except
92 that any person providing architectural, engineering or land surveying services for the
93 design-builder on the design-build highway project must be licensed in Missouri to provide such
94 services.

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

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

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

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

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

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

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

135 21. For any highway design-build project constructed under this section, the commission
136 shall negotiate and reach agreements with affected railroads. Such agreements shall include
137 clearance, safety, insurance, and indemnification provisions, but are not required to include
138 provisions on right-of-way acquisitions.

249.425. 1. As used in this section, the following terms mean:

2 (1) **"Design-build", a project for which the design and construction services are**
3 **furnished under one contract;**

4 (2) **"Design-build contract", a contract between a sewer district and a design-build**
5 **contractor to furnish the architecture, engineering, and related design services, and the**
6 **labor, materials, and other construction services required for a specific construction**
7 **project;**

8 (3) **"Design-build contractor", any individual, partnership, joint venture,**
9 **corporation, or other legal entity that furnishes architecture or engineering services and**
10 **construction services either directly or through subcontracts;**

11 (4) **"Design-build project", the design, construction, alteration, addition,**
12 **remodeling, or improvement of any sewer district buildings or facilities under contract**
13 **with a sewer district. Contracts for design-build projects that involve the construction,**
14 **replacement or rehabilitation of a sewer district pump station or any other project that is**
15 **located solely on sewer district property, such that in all cases, the project must exceed an**
16 **expenditure of one million dollars. Design-build projects shall not include projects built**
17 **on easements or rights-of-way dedicated to the sewer district involving open-cut sewer lines**
18 **or rehabilitation of sewer district sewer lines;**

19 (5) **"Design criteria package", performance-oriented specifications for the**
20 **design-build project sufficient to permit a design-build contractor to prepare a response**
21 **to the sewer district's request for proposals for a design-build project, which may include**
22 **preliminary designs for the project or portions thereof;**

23 (6) **"Sewer district", any metropolitan sewer district established under section**
24 **30(a), article VI, Constitution of Missouri.**

25 **2. (1) Notwithstanding any other provision of law to the contrary, any sewer**
26 **district is authorized to enter into design-build contracts for design-build projects that**
27 **exceed an expenditure of one million dollars.**

28 **(2) In using a design-build contract, the sewer district shall establish a written**
29 **procedure by rule for prequalifying design-build contractors before such design-build**
30 **contractors will be allowed to make a proposal on the project.**

31 **(3) The sewer district shall adopt procedures for:**

32 **(a) The prequalification review team;**

33 **(b) Specifications for the design criteria package;**

34 **(c) The method of advertising, receiving, and evaluating proposals from**
35 **design-build contractors;**

36 **(d) The criteria for awarding the design-build contract based on the design criteria**
37 **package and a separate proposal stating the cost of construction; and**

38 **(e) Other methods, procedures, and criteria necessary to administer this section.**

39 **(4) The sewer district is authorized to issue a request for proposals to a maximum**
40 **of five design-build contractors who are prequalified in accordance with this section.**

41 **(5) The sewer district may require approval of any person performing subcontract**
42 **work on the design-build project including, but not limited to, those furnishing design**
43 **services, labor, materials or equipment.**

44 **3. (1) Before the prequalification process specified in this section, the sewer district**
45 **shall publicly advertise, once a week for two consecutive weeks, in a newspaper of general**
46 **circulation, qualified under chapter 493, located within the cities located in the sewer**
47 **district, or if there be no such newspaper, in a qualified newspaper of general circulation**
48 **in the county, or if there be no such newspaper, in a qualified newspaper of general**
49 **circulation in an adjoining county, and may advertise in business, trade, or minority**
50 **newspapers, for qualification submissions on said design-build project.**

51 **(2) If the sewer district fails to receive at least two responsive submissions from**
52 **prequalified design-build contractors, submissions shall not be opened and the sewer shall**
53 **readvertise the project.**

54 **(3) The sewer district shall have the right to reject any and all submissions and**
55 **proposals.**

56 **(4) The proposals from prequalified design-build contractors shall be submitted**
57 **sealed and in writing, to be opened publicly at the time and place of the sewer district's**
58 **choosing. Technical proposals and qualifications submissions shall be submitted**
59 **separately from any cost proposals. No cost proposal shall be opened until the technical**

60 proposals and qualifications submissions are first opened, evaluated, and ranked in
61 accordance with the criteria identified by the sewer district in the request for proposals.

62 (5) The design-build contract shall be awarded to the design-build contractor
63 whose proposal represents the best overall value to the sewer district in terms of quality,
64 technical skill, schedule, and cost.

65 (6) No proposal shall be entertained by the sewer district that is not made in
66 accordance with the request for proposals furnished by the sewer district.

67 4. (1) The payment bond requirements of section 107.170 shall apply to the
68 design-build project. All persons furnishing design services shall be deemed to be covered
69 by the payment bond the same as any person furnishing labor or materials; however, the
70 performance bond for the design-build contractor does not need to cover the design
71 services as long as the design-build contractor or its subcontractors providing design
72 services carry professional liability insurance in an amount established by the sewer
73 district in the request for proposals.

74 (2) Any person or firm providing architectural, engineering, or land surveying
75 services for the design-build contractor on the design-build project shall be duly licensed
76 or authorized in this state to provide such services as required by chapter 327.

77 5. (1) A sewer district planning a design-build project shall retain an architect or
78 engineer, as appropriate to the project type, under sections 8.285 to 8.291, to assist with
79 programming, site selection, master plan, the design criteria package, preparation of the
80 request for proposals, prequalifying design-build contractors, evaluation of proposals, and
81 preparation of forms necessary to award the design-build contract. The sewer district shall
82 also retain that same architect or engineer or another to perform contract administration
83 functions on behalf of the sewer district during the construction phase and after project
84 completion. If the sewer district has an architect or engineer capable of fulfilling the
85 functions described in this section, the sewer district is exempt from being required to
86 retain another such professional.

87 (2) Any architect or engineer who is retained by a sewer district under this section
88 shall be ineligible to act as the design-build contractor, or to participate as part of the
89 design-build contractor's team as a subcontractor, joint venturer, partner, or otherwise for
90 the same design-build project for which the architect or engineer was hired by the sewer
91 district.

92 6. Under section 327.465, any design-build contractor that enters into a
93 design-build contract for a sewer district is exempt from the requirement that such person
94 or entity hold a certificate of registration or such corporation hold a certificate of authority
95 if the architectural, engineering, or land surveying services to be performed under the

96 **contract are performed through subcontracts with properly licensed and authorized**
97 **persons or entities, and not performed by the design-build contractor or its own employees.**

319.016. Notwithstanding any provision of sections 319.010 to 319.050 to the contrary,
2 the state highways and transportation commission shall not be required to be a notification center
3 participant after December 31, [2011] **2014**, but nothing in this section shall prohibit the
4 commission from voluntarily choosing to be a notification center participant after that date.

319.025. 1. Except as provided in subsection 3 of section 319.030 and in section
2 319.050, a person shall not make or begin any excavation in any public street, road or alley,
3 right-of-way dedicated to the public use or utility easement of record or within any private street
4 or private property without first giving notice to the notification center and obtaining information
5 concerning the possible location of any underground facilities which may be affected by said
6 excavation from underground facility owners whose names appear on the current list of
7 participants in the notification center and who were communicated to the excavator as
8 notification center participants who would be informed of the excavation notice. Prior to January
9 1, 2003, a person shall not make or begin any excavation pursuant to this subsection without also
10 making notice to owners or operators of underground facilities which do not participate in a
11 notification center and whose name appears on the current list of the recorder of deeds in and for
12 the county in which the excavation is to occur. Beginning January 1, 2003, notice to the
13 notification center of proposed excavation shall be deemed notice to all owners and operators
14 of underground facilities. The notice referred to in this section shall comply with the provisions
15 of section 319.026. [As part of the process to request the locating of underground facilities and
16 having them properly marked, the notification center shall ask excavators to identify whether or
17 not the proposed excavation will be on a public right-of-way or easement dedicated to public use
18 for vehicular traffic.]

19 2. An excavator's notice to owners and operators of underground facilities participating
20 in the notification center pursuant to section 319.022 is ineffective for purposes of subsection
21 1 of this section unless given to such notification center. Prior to January 1, 2003, the notice
22 required by subsection 1 of this section shall be given directly to owners or operators of
23 underground facilities who are not represented by a notification center.

24 3. Notification center participants shall be relieved of the responsibility to respond to a
25 notice of intent to excavate received directly from the person intending to commence an
26 excavation, except for requests for clarification of markings through on-site meetings as provided
27 in subsection 1 of section 319.030 and requests for locations at the time of an emergency as
28 provided by section 319.050.

29 4. If the owner or operator notifies the excavator that the area of excavation cannot be
30 determined from the description provided by the excavator through the notice required by this

31 section, the excavator shall provide clarification of the area of excavation by markings or by
32 providing project plans to the owner or operator, or by meeting on the site of the excavation with
33 representatives of the owner or operator as provided by subsection 1 of section 319.030.

34 5. Notwithstanding the provisions of this section to the contrary, a person shall not make
35 or begin any excavation in any state highway, or on the right-of-way of any state highway,
36 without first obtaining a permit from the state highways and transportation commission pursuant
37 to section 227.240, provided however, the provisions of this subsection shall not apply to
38 railroad right-of-way owned or operated by a railroad.

T