

SECOND REGULAR SESSION

SENATE BILL NO. 752

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS KEHOE, LAMPING AND McKENNA.

Read 1st time February 6, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4707S.021

AN ACT

To amend chapter 226, RSMo, by adding thereto twenty-five new sections relating to a public-private partnership between the state highways and transportation commission and a private partner to reconstruct an interstate highway as a toll facility, with penalty provisions.

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

Section A. Chapter 226, RSMo, is amended by adding thereto twenty-five
2 new sections, to be known as sections 227.700, 227.703, 227.706, 227.709,
3 227.712, 227.715, 227.718, 227.721, 227.724, 227.727, 227.730, 227.733, 227.736,
4 227.739, 227.742, 227.745, 227.746, 227.748, 227.751, 227.754, 227.757, 227.760,
5 227.763, 227.766, and 227.769, to read as follows:

**227.700. 1. Sections 227.700 to 227.769 shall be known and may
2 be cited as the "Interstate 70 Public-Private Partnership Act", and the
3 provisions in sections 227.600 to 227.669 shall not be applicable to this
4 Act.**

**5 2. As used in sections 227.700 to 227.769, unless the context
6 clearly requires otherwise, the following terms mean:**

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

**9 (2) "Comprehensive agreement", the final binding written
10 comprehensive project agreement between a private partner and the
11 commission required in section 227.721 to finance, develop, or operate
12 the project;**

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

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

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

19 (6) "Interim agreement", a preliminary binding written
20 agreement between a private partner and the commission that provides
21 for completion of studies and any other activities to advance the
22 financing, development, or operation of the project required by section
23 227.718;

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

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

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

32 (10) "Project", the interstate highway corridor incorporated into
33 the state highway system and administered by the Commission and
34 designated by the Commission as Interstate 70. The project shall be
35 located from where Interstate 70 intersects with Interstate 470 in the
36 county with a charter form of government and with more than six
37 hundred thousand but fewer than seven hundred thousand inhabitants
38 to where Interstate 70 intersects with Interstate 64/U.S. Route 40 within
39 the county with a charter form of government and with more than
40 three hundred thousand but fewer than four hundred fifty thousand
41 inhabitants that is to be financed, developed or operated under
42 agreement between the commission and a private partner;

43 (11) "Public use", a finding by the commission that the project to
44 be financed, developed, or operated by a private partner under sections
45 227.700 to 227.769 will improve or is a necessary or desirable addition
46 to the state highway system, will serve the public safety, health, and
47 welfare of motorists and other persons and entities using the facility,
48 and will increase the efficiency and effectiveness of the project's
49 economic benefits to the state of Missouri;

50 (12) "Revenues", include but are not limited to the following
51 which arise out of or in connection with the financing, development, or
52 operation of the project:

- 53 **(a) Income;**
54 **(b) Earnings;**
55 **(c) Proceeds;**
56 **(d) User fees;**
57 **(e) Lease payments;**
58 **(f) Allocations;**
59 **(g) Federal, state, and local moneys; or**
60 **(h) Private sector moneys, grants, bond proceeds, or equity**
61 **investments;**
62 **(13) "State", the state of Missouri;**
63 **(14) "State highway system", the state system of highways and**
64 **bridges designated, planned, located, relocated, established, acquired,**
65 **constructed, and maintained by the commission under section 30(b),**
66 **article IV, Constitution of Missouri;**
67 **(15) "User fees", tolls, fees, rents, or other charges authorized to**
68 **be imposed by the commission and collected by the private partner for**
69 **the use of all or a portion of a project under a comprehensive**
70 **agreement.**

227.703. 1. The general assembly finds that:

2 **(1) Interstate 70 is one of the nation's oldest interstate facilities,**
3 **its physical condition continues to deteriorate and it is significantly**
4 **congested, which reduces the efficiency and effectiveness of its**
5 **economic capability to transport persons, products, and services into**
6 **and through the state of Missouri and the United States. Even more**
7 **significantly, Interstate 70's condition substantially diminishes the**
8 **safety, health, and welfare of the motor vehicle operators that use**
9 **it. These economic, safety, health, and welfare impacts will continue**
10 **to worsen until sufficient funds are obtained and directed to the**
11 **reconstruction and expansion of Interstate 70;**

12 **(2) The cost to reconstruct Interstate 70 to improve its physical**
13 **condition and reduce congestion is estimated to be between one billion**
14 **five hundred million dollars and four billion dollars, and neither the**
15 **Commission nor the state of Missouri have additional, sufficient public**
16 **funds that are necessary to pay these costs;**

17 **(3) Reconstructing Interstate 70 would create over twenty-five**
18 **thousand jobs for seven to ten years in the construction industry and**
19 **with materials suppliers, and would further economic development**

20 along the Interstate 70 corridor and the state of Missouri;

21 (4) The present and future traffic congestion on Interstate 70 and
22 the lack of available public (federal, state, and political subdivision)
23 funds require the state of Missouri to consider alternative and
24 innovative financing tools to finance the costs to reconstruct Interstate
25 70, including the imposition and collection of tolls on a reconstructed
26 Interstate 70; and

27 (5) Sections 227.700 to 227.769 will encourage private sector
28 innovation and investment in the state of Missouri to reconstruct
29 Interstate 70 through a public private partnership, a project that would
30 not otherwise be undertaken, and thereby serve the public safety,
31 health, and welfare of motor vehicle operators using the reconstructed
32 Interstate 70 toll road, and increase the efficiency and effectiveness of
33 Interstate 70's economic benefits to the state of Missouri.

34 2. Sections 227.700 to 227.769 shall be liberally construed to
35 accomplish the legislative findings and purposes set forth in this
36 section.

227.706. 1. Any potential private partner may submit a request
2 for approval to the commission to finance, develop, or operate the
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.

8 3. If the commission determines there is sufficient merit to
9 pursue a request for approval, the commission shall issue a request for
10 proposal as required by section 227.709 to give other entities an
11 opportunity to submit to the commission competing proposals for its
12 consideration.

227.709. 1. The commission shall use a competitive procurement
2 process to form a public-private partnership under sections 227.700 to
3 227.769 and may proceed with a project under sections 227.700 to
4 227.769 only if the commission issues a request for proposals for the
5 financing, development, or operation of the project on the commission's
6 own initiative or in response to a request for approval submitted by a
7 potential private partner under section 227.706.

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 227.706, the commission shall not
22 charge a processing and review fee.

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

10 2. To promote and support the objectives of the United States of
11 America's foreign policy regarding terrorism, the commission shall
12 establish, prior to the receipt and review of any request for approval
13 or response to a request for proposal, a policy that prohibits a private
14 partner from being eligible to enter into an interim or comprehensive
15 agreement with the commission to finance, develop or operate the
16 project if such private partner, its subsidiaries or affiliated entities, are
17 known to sponsor terrorism or aid the government of countries that are
18 known to sponsor terrorism.

227.715. The commission may by commission minute approve the
2 project if the commission determines the project will improve and is a
3 necessary or desirable addition to the state highway system, will serve
4 the public safety, health, and welfare of motor vehicle operators and
5 other persons and entities using the project and will increase the

6 efficiency and effectiveness of the project's economic benefits to the
7 state of Missouri.

227.718. 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, 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 or operating the project;
10 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, or operate the
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 deem appropriate.

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

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

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

12 to the commission;

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

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

17 2. Prior to approval of any comprehensive agreement authorized
18 by this section, the commission shall perform a value for money
19 analysis using a public sector comparator to determine whether the
20 project, if procured under a public private partnership procurement,
21 would provide more value to the public than any other available
22 finance and project delivery procurement methods that are otherwise
23 available to the commission.

227.724. 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.

227.727. 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 227.706 or under a response to a request for
4 proposal as provided in section 227.709 shall be a closed record under
5 chapter 610; 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.

227.730. The private partner shall have the following powers:

2 (1) To contract with a federal agency, the state or its agencies
3 and political subdivisions, the commission, a local or regional
4 transportation authority, a corporation, a partnership, or any person
5 to finance, develop, or operate the project;

6 (2) To lease or acquire any right to use or finance, develop, or
7 operate the project with the length of any term to be established in the
8 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 227.760 and 227.766;

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.

227.733. 1. The private partner shall, in connection with the
2 financing, development, 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 or 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 paid to the private
11 partner from all sources for the project;

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 227.763 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 employees 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 condition; 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 and section
31 227.100 to the contrary, a bid bond shall not be required for the project;
32 except that, the commission may require the private partner to provide
33 such other bonds in such amounts determined by the commission to be
34 adequate for the protection of the commission and provided by a surety

35 or sureties satisfactory to the commission, including but not limited to:

36 (1) A performance bond;

37 (2) A payment bond for the protection of all persons supplying
38 labor and material in carrying out the work provided for in the
39 comprehensive agreement for the project. The amount of the payment
40 bond shall equal the total amount payable under the terms of the
41 comprehensive agreement unless the commission determines in writing
42 supported by specific findings that a payment bond in such amount is
43 impractical, in which case the commission shall establish the amount
44 of the payment bond; except that, the amount of the payment bond shall
45 not be less than the amount of the performance bond.

227.736. The commission may:

2 (1) Delegate any of the commission's powers under sections
3 227.700 to 227.769 to the department to carry out the purposes of
4 sections 227.700 to 227.769;

5 (2) Promulgate rules to implement the provisions of sections
6 227.700 to 227.769. Any rule or portion of a rule, as that term is defined
7 in section 536.010 that is created under the authority delegated in this
8 section shall become effective only if it complies with and is subject to
9 all of the provisions of chapter 536 and, if applicable, section
10 536.028. This section and chapter 536 are nonseverable and if any of
11 the powers vested with the general assembly pursuant to chapter 536
12 to review, to delay the effective date, or to disapprove and annul a rule
13 are subsequently held unconstitutional, then the grant of rulemaking
14 authority and any rule proposed or adopted after August 28, 2012, shall
15 be invalid and void; and

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

227.739. 1. The commission or the private partner may impose,
2 collect, and enforce user fees for the use of the project as provided in
3 the comprehensive agreement. The comprehensive agreement shall
4 also provide the rate of such user fees as may be established by
5 agreement of the commission and the private partner. Such user fees
6 shall be set in an amount that takes into account any lease payments,
7 reasonable return on investment to the private partner, reasonable
8 costs of financing, development, or operation of the project, and any

9 other costs incurred by the commission and the private partner
10 attributed solely to the project. A rate schedule of the current user fees
11 imposed and collected for use of the project shall be made available to
12 the public by the private partner or the commission. Such user fees
13 shall be the same for persons using the project under similar
14 conditions, except as required by agreement between the commission
15 and the private partner to preserve capacity and prevent congestion on
16 the project. The collection and enforcement of such user fees shall be
17 consistent with sections 227.760 and 227.766.

18 2. Pursuant to the comprehensive agreement, the user fees
19 collected for the use of the project may be deposited into:

20 (1) The state road fund; or

21 (2) A trust account as provided under the comprehensive
22 agreement.

23 All user fee revenue derived from the project shall be expended only as
24 provided in the comprehensive agreement.

227.742. 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 to finance, develop, or operate
7 the project; provided that the commission shall obtain from the private
8 partner such security for any loan made to the private partner in any
9 type or amount as the commission deems necessary.

227.745. 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 bonds, including, but not
9 limited to, toll revenue, corporate, private activity, refunding, and
10 loans, notes, and other obligations, and may secure any of such
11 obligations by mortgage, pledge, or deed of trust of any or all of the
12 property and revenue of the private partner. The commission may

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

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

227.746. 1. Any revenues collected or received under the
2 authority of sections 227.700 to 227.769 shall be exempt from any tax on
3 income imposed by any law of this state.

4 2. The provisions of subsection 4 of section 144.054 are applicable
5 to all sales made to or purchases made by a private partner for use in
6 completing the project authorized under sections 227.700 to 227.769.

7 3. Property financed, developed, or operated by a private partner
8 under the comprehensive agreement with the commission shall be
9 exempt from all state and political subdivision ad valorem and property
10 taxes that might otherwise be applicable.

227.748. 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, or operation of the
4 project:

5 (1) Use any project delivery method for the efficient development

6 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 or sections 227.100 and 227.107. In addition, the limitation
9 in subsection 1 of section 227.107 on the number of design-build
10 contracts authorized to be let by the commission shall not apply to the
11 project;

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

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

227.751. 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 department's disadvantaged business
9 participation goals, and such other qualifications the commission
10 considers to be in the best interest of the state.

227.754. 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 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.

227.757. 1. The commission may condemn lands for the project
2 in the name of the state highways and transportation commission.

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

7 3. The private partner may, after prior notice to the owner to
8 enter upon the private property subject to the taking, survey, and

9 determine the most advantageous route and design. The private
10 partner shall be liable for all damages to the property resulting from
11 such inspection.

227.760. 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 the purposes of collection and
7 enforcement of user fees for the use of the project on or near the
8 windshield of a motor vehicle shall not be a violation of any law or rule
9 in the state of Missouri unless the device is attached in a manner that
10 obstructs the operator's clear view of the project.

11 2. The private partner operating the project as a toll facility
12 shall post notice on or around such facility in the plain view of
13 operators of motor vehicles using such facility which reads as follows:
14 "NOTICE: FAILURE TO PAY THE REQUIRED TOLL IS A TRAFFIC
15 VIOLATION. ANY FAILURE TO PAY THE REQUIRED TOLLS SHALL
16 BE REPORTED TO THE APPROPRIATE LAW ENFORCEMENT
17 OFFICIALS WHO WILL ISSUE A TRAFFIC CITATION."

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

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

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

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

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

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

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

72 proceeding to adjudicate 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.

227.763. 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 or operates the project under sections 227.700 to
6 227.769. 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 as such caps are annually amended
9 by the Implicit Price Deflator for Personal Consumption Expenditures
10 under subsection 5 of section 537.610.

11 2. Commercial general liability insurance policy or policies
12 purchased by the private partner under sections 227.700 to 227.769 shall
13 not be used to expand the coverage and amount of the tort liability
14 caps imposed in this section.

227.766. 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 227.733;

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 any real property interest of the**
15 **private partner in the project. Any person who provides financing for**
16 **the project, to the extent of such person's capital investment, may**
17 **participate in the condemnation proceedings with the standing of a**
18 **property owner;**

19 **(4) Collect and enforce user fees for the use of the project under**
20 **section 227.760.**

227.769. 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 committee on**
5 **transportation oversight in accordance with section 21.795. The annual**
6 **report shall assess the advantages and disadvantages of the public-**
7 **private partnership method of financing, developing, or operating the**
8 **project.**

✓
Bill

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