

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 2376

## 98TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 27, 2016, with recommendation that the Senate Committee Substitute do pass.

5857S.04C

ADRIANE D. CROUSE, Secretary.

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### AN ACT

To repeal sections 68.057 and 536.031, RSMo, and to enact in lieu thereof five new sections relating to construction regulation.

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

Section A. Sections 68.057 and 536.031, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 67.5050, 67.5060, 68.057, 197.065, and 536.031, to read as follows:

**67.5050. 1. As used in this section, the following terms mean:**

**(1) "Construction manager", the legal entity that proposes to enter into a construction management-at-risk contract under this section;**

**(2) "Construction manager-at-risk", a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the construction, rehabilitation, alteration, or repair of a project at the contracted price as a general contractor and provides consultation to a political subdivision regarding construction during and after the design of the project.**

**2. Any political subdivision may use the construction manager-at-risk method for: civil works projects such as roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, airport runways and taxiways, storm drainage and flood control projects, or transit projects commonly designed by professional engineers in excess of two million**

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

17 dollars; and noncivil works projects such as buildings, site  
18 improvements, and other structures, habitable or not, commonly  
19 designed by architects in excess of three million dollars. In using that  
20 method and in entering into a contract for the services of a  
21 construction manager-at-risk, the political subdivision shall follow the  
22 procedures prescribed by this section.

23         3. Before or concurrently with selecting a construction manager-  
24 at-risk, the political subdivision shall select or designate an engineer  
25 or architect who shall prepare the construction documents for the  
26 project and who shall comply with all state laws, as applicable. If the  
27 engineer or architect is not a full-time employee of the political  
28 subdivision, the political subdivision shall select the engineer or  
29 architect on the basis of demonstrated competence and qualifications  
30 as provided by sections 8.285 to 8.291. The political subdivision's  
31 engineer or architect for a project may not serve, alone or in  
32 combination with another, as the construction manager-at-risk. This  
33 subsection does not prohibit a political subdivision's engineer or  
34 architect from providing customary construction phase services under  
35 the engineer's or architect's original professional service agreement in  
36 accordance with applicable licensing laws.

37         4. The political subdivision may provide or contract for,  
38 independently of the construction manager-at-risk, inspection services,  
39 testing of construction materials, engineering, and verification of  
40 testing services necessary for acceptance of the project by the political  
41 subdivision.

42         5. The political subdivision shall select the construction  
43 manager-at-risk in a two-step process. The political subdivision shall  
44 prepare a request for qualifications, for the case of the first step of the  
45 two-step process, that includes general information on the project site,  
46 project scope, schedule, selection criteria, and the time and place for  
47 receipt of proposals or qualifications, as applicable, and other  
48 information that may assist the political subdivision in its selection of  
49 a construction manager-at-risk. The political subdivision shall state the  
50 selection criteria in the request for proposals or qualifications, as  
51 applicable. The selection criteria may include the construction  
52 manager's experience, past performance, safety record, proposed  
53 personnel and methodology, and other appropriate factors that

54 demonstrate the capability of the construction manager-at-risk. The  
55 political subdivision shall not request fees or prices in step one. In  
56 step two, the political subdivision may request that five or fewer  
57 construction managers, selected solely on the basis of qualifications,  
58 provide additional information, including the construction manager-at-  
59 risk's proposed fee and its price for fulfilling the general  
60 conditions. Qualifications shall account for a minimum of forty percent  
61 of the evaluation. Cost shall account for a maximum of sixty percent  
62 of the evaluation.

63         6. The political subdivision shall publish the request for  
64 proposals or qualifications by publication in a newspaper of general  
65 circulation published in the county where the political subdivision is  
66 located once a week for two consecutive weeks prior to opening the  
67 proposals or qualifications submissions or by a virtual notice procedure  
68 that notifies interested parties for at least twenty various purchases,  
69 design contracts, construction contracts, or other contracts each year  
70 for the political subdivision.

71         7. For each step, the political subdivision shall receive, publicly  
72 open, and read aloud the names of the construction managers. Within  
73 forty-five days after the date of opening the proposals or qualification  
74 submissions, the political subdivision or its representative shall  
75 evaluate and rank each proposal or qualification submission submitted  
76 in relation to the criteria set forth in the request for proposals or  
77 request for qualifications. The political subdivision shall interview at  
78 least two of the top qualified offerors as part of the final selection.

79         8. The political subdivision or its representative shall select the  
80 construction manager that submits the proposal that offers the best  
81 value for the political subdivision based on the published selection  
82 criteria and on its ranking evaluation. The political subdivision or its  
83 representative shall first attempt to negotiate a contract with the  
84 selected construction manager. If the political subdivision or its  
85 representative is unable to negotiate a satisfactory contract with the  
86 selected construction manager, the political subdivision or its  
87 representative shall, formally and in writing, end negotiations with  
88 that construction manager and proceed to negotiate with the next  
89 construction manager in the order of the selection ranking until a  
90 contract is reached or negotiations with all ranked construction

91 managers end.

92           **9. A construction manager-at-risk shall publicly advertise, in the**  
93 **manner prescribed by chapter 50, and receive bids or proposals from**  
94 **trade contractors or subcontractors for the performance of all major**  
95 **elements of the work other than the minor work that may be included**  
96 **in the general conditions. A construction manager-at-risk may seek to**  
97 **perform portions of the work itself if the construction manager-at-risk**  
98 **submits its sealed bid or sealed proposal for those portions of the work**  
99 **in the same manner as all other trade contractors or**  
100 **subcontractors. All sealed bids or proposals shall be submitted at the**  
101 **time and location as specified in the advertisement for bids or**  
102 **proposals and shall be publicly opened and the identity of each bidder**  
103 **and their bid amount shall be read aloud. The political subdivision**  
104 **shall have the authority to restrict the construction manager-at-risk**  
105 **from submitting bids to perform portions of the work.**

106           **10. The construction manager-at-risk and the political**  
107 **subdivision or its representative shall review all trade contractor,**  
108 **subcontractor, or construction manager-at-risk bids or proposals in a**  
109 **manner that does not disclose the contents of the bid or proposal**  
110 **during the selection process to a person not employed by the**  
111 **construction manager-at-risk, engineer, architect, or political**  
112 **subdivision involved with the project. If the construction**  
113 **manager-at-risk submitted bids or proposals, the political subdivision**  
114 **shall determine if the construction manager-at-risk's bid or proposal**  
115 **offers the best value for the political subdivision. After all proposals**  
116 **have been evaluated and clarified, the award of all subcontracts shall**  
117 **be made public.**

118           **11. If the construction manager-at-risk reviews, evaluates, and**  
119 **recommends to the political subdivision a bid or proposal from a trade**  
120 **contractor or subcontractor but the political subdivision requires**  
121 **another bid or proposal to be accepted, the political subdivision shall**  
122 **compensate the construction manager-at-risk by a change in price,**  
123 **time, or guaranteed maximum cost for any additional cost and risk that**  
124 **the construction manager-at-risk may incur because of the political**  
125 **subdivision's requirement that another bid or proposal be accepted.**

126           **12. If a selected trade contractor or subcontractor materially**  
127 **defaults in the performance of its work or fails to execute a subcontract**

128 after being selected in accordance with this section, the construction  
129 manager-at-risk may itself, without advertising, fulfill the contract  
130 requirements or select a replacement trade contractor or subcontractor  
131 to fulfill the contract requirements. The penal sums of the performance  
132 and payment bonds delivered to the political subdivision shall each be  
133 in an amount equal to the fixed contract amount or guaranteed  
134 maximum price. The construction manager-at-risk shall deliver the  
135 bonds not later than the tenth day after the date the fixed contract  
136 amount or guaranteed maximum price is established.

137 13. This section shall not apply to:

138 (1) Any metropolitan sewer district established under article VI,  
139 section 30(a) of the Constitution of Missouri;

140 (2) Any special charter city, or any city or county governed by  
141 home rule under article VI, section 18 or 19 of the Constitution of  
142 Missouri that has adopted a construction manager-at-risk method via  
143 ordinance, rule or regulation.

144 14. Notwithstanding the provisions of section 23.253 to the  
145 contrary, the provisions of this section shall expire September 1, 2026.

67.5060. 1. As used in this section, the following terms mean:

2 (1) "Design-build", a project delivery method subject to a three-  
3 stage qualifications-based selection for which the design and  
4 construction services are furnished under one contract;

5 (2) "Design-build contract", a contract which is subject to a three-  
6 stage qualifications-based selection process similar to that described  
7 in sections 8.285 to 8.291 between a political subdivision and a design-  
8 builder to furnish the architectural, engineering, and related design  
9 services and the labor, materials, supplies, equipment, and other  
10 construction services required for a design-build project;

11 (3) "Design-build project", the design, construction, alteration,  
12 addition, remodeling, or improvement of any buildings or facilities  
13 under contract with a political subdivision. Such design-build projects  
14 include, but are not limited to:

15 (a) Civil works projects, such as roads, streets, bridges, utilities,  
16 airport runways and taxiways, storm drainage and flood control  
17 projects, or transit projects; and

18 (b) Noncivil works projects, such as buildings, site  
19 improvements, and other structures, habitable or not, commonly

20 designed by architects in excess of seven million dollars;

21 (4) "Design-builder", any individual, partnership, joint venture,  
22 or corporation subject to a qualification-based selection that offers to  
23 provide or provides design services and general contracting services  
24 through a design-build contract in which services within the scope of  
25 the practice of professional architecture or engineering are performed  
26 respectively by a licensed architect or licensed engineer and in which  
27 services within the scope of general contracting are performed by a  
28 general contractor or other legal entity that furnishes architecture or  
29 engineering services and construction services either directly or  
30 through subcontracts or joint ventures;

31 (5) "Design criteria consultant", a person, corporation,  
32 partnership, or other legal entity duly licensed and authorized to  
33 practice architecture or professional engineering in this state under  
34 chapter 327, who is employed by or contracted by the political  
35 subdivision to assist the political subdivision in the development of  
36 project design criteria, requests for proposals, evaluation of proposals,  
37 the evaluation of the construction under a design-build contract to  
38 determine adherence to the design criteria, and any additional services  
39 requested by the political subdivisions to represent its interests in  
40 relation to a project. The design criteria consultant may not submit a  
41 proposal or furnish design or construction services for the design-build  
42 contract for which its services were sought;

43 (6) "Design criteria package", performance-oriented program,  
44 scope, and specifications for the design-build project sufficient to  
45 permit a design-builder to prepare a response to a political  
46 subdivision's request for proposals for a design-build project, which  
47 may include capacity, durability, standards, ingress and egress  
48 requirements, performance requirements, description of the site,  
49 surveys, soil and environmental information concerning the site,  
50 interior space requirements, material quality standards, design and  
51 construction schedules, site development requirements, provisions for  
52 utilities, storm water retention and disposal, parking requirements,  
53 applicable governmental code requirements, preliminary designs for  
54 the project or portions thereof, and other criteria for the intended use  
55 of the project;

56 (7) "Design professional services", services that are:

57 (a) Within the practice of architecture as defined in section  
58 327.091, or within the practice of professional engineering as defined  
59 in section 327.181; or

60 (b) Performed by a licensed or authorized architect or  
61 professional engineer in connection with the architect's or professional  
62 engineer's employment or practice;

63 (8) "Proposal", an offer in response to a request for proposals by  
64 a design-builder to enter into a design-build contract for a design-build  
65 project under this section;

66 (9) "Request for proposal", the document by which the political  
67 subdivision solicits proposals for a design-build contract; and

68 (10) "Stipend", an amount paid to the unsuccessful but  
69 responsive, short-listed design-builders to defray the cost of  
70 participating in phase II of the selection process described in this  
71 section.

72 2. In using a design-build contract, the political subdivision shall  
73 determine the scope and level of detail required to permit qualified  
74 persons to submit proposals in accordance with the request for  
75 proposals given the nature of the project.

76 3. A design criteria consultant shall be employed or retained by  
77 the political subdivision to assist in preparation of the design criteria  
78 package and request for proposal, perform periodic site visits to  
79 observe adherence to the design criteria, prepare progress reports,  
80 review and approve progress and final pay applications of the design-  
81 builder, review shop drawings and submissions, provide input in  
82 disputes, help interpret the construction documents, perform  
83 inspections upon substantial and final completion, assist in warranty  
84 inspections, and provide any other professional service assisting with  
85 the project administration. The design criteria consultant may also  
86 evaluate construction as to the adherence of the design criteria. The  
87 consultant shall be selected and its contract negotiated in compliance  
88 with sections 8.285 to 8.291 unless the consultant is a direct employee  
89 of the political subdivision.

90 4. Notice of requests for proposals shall be advertised by  
91 publication in a newspaper of general circulation published in the  
92 county where the political subdivision is located once a week for two  
93 consecutive weeks prior to opening the proposals, or by a virtual notice

94 procedure that notifies interested parties for at least twenty various  
95 purchases, design contracts, construction contracts, or other contracts  
96 each year for the political subdivision. The political subdivision shall  
97 publish a notice of a request for proposal with a description of the  
98 project, the procedures for submission, and the selection criteria to be  
99 used.

100 5. The political subdivision shall establish in the request for  
101 proposal a time, place, and other specific instructions for the receipt  
102 of proposals. Proposals not submitted in strict accordance with the  
103 instructions shall be subject to rejection.

104 6. A request for proposal shall be prepared for each design-build  
105 contract containing at minimum the following elements:

106 (1) The procedures to be followed for submitting proposals, the  
107 criteria for evaluating proposals and their relative weight, and the  
108 procedures for making awards;

109 (2) The proposed terms and conditions for the design-build  
110 contract, if available;

111 (3) The design criteria package;

112 (4) A description of the drawings, specifications, or other  
113 information to be submitted with the proposal, with guidance as to the  
114 form and level of completeness of the drawings, specifications, or other  
115 information that will be acceptable;

116 (5) A schedule for planned commencement and completion of the  
117 design-build contract, if any;

118 (6) Budget limits for the design-build contract, if any;

119 (7) Requirements including any available ratings for  
120 performance bonds, payment bonds, and insurance, if any;

121 (8) The amount of the stipend which will be available; and

122 (9) Any other information that the political subdivision in its  
123 discretion chooses to supply including, but not limited to, surveys, soil  
124 reports, drawings of existing structures, environmental studies,  
125 photographs, references to public records, or affirmative action and  
126 minority business enterprise requirements consistent with state and  
127 federal law.

128 7. The political subdivision shall solicit proposals in a three-  
129 stage process. Phase I shall be the solicitation of qualifications of the  
130 design-build team. Phase II shall be the solicitation of a technical



131 **proposal including conceptual design for the project. Phase III shall be**  
132 **the proposal of the construction cost.**

133 **8. The political subdivision shall review the submissions of the**  
134 **proposals and assign points to each proposal in accordance with this**  
135 **section and as set out in the instructions of the request for proposal.**

136 **9. Phase I shall require all design-builders to submit a statement**  
137 **of qualification that shall include, but not be limited to:**

138 **(1) Demonstrated ability to perform projects comparable in**  
139 **design, scope, and complexity;**

140 **(2) References of owners for whom design-build projects,**  
141 **construction projects, or design projects have been performed;**

142 **(3) Qualifications of personnel who will manage the design and**  
143 **construction aspects of the project; and**

144 **(4) The names and qualifications of the primary design**  
145 **consultants and the primary trade contractors with whom the design-**  
146 **builder proposes to subcontract or joint venture. The design-builder**  
147 **may not replace an identified contractor, subcontractor, design**  
148 **consultant, or subconsultant without the written approval of the**  
149 **political subdivision.**

150 **10. The political subdivision shall evaluate the qualifications of**  
151 **all the design-builders who submitted proposals in accordance with the**  
152 **instructions of the request for proposal. Architectural and engineering**  
153 **services on the project shall be evaluated in accordance with the**  
154 **requirements of sections 8.285 and 8.291. Qualified design-builders**  
155 **selected by the evaluation team may proceed to phase II of the**  
156 **selection process. Design-builders lacking the necessary qualifications**  
157 **to perform the work shall be disqualified and shall not proceed to**  
158 **phase II of the process. This process of short listing shall narrow the**  
159 **number of qualified design-builders to not more than five nor fewer**  
160 **than two. Under no circumstances shall price or fees be a part of the**  
161 **prequalification criteria. Design-builders may be interviewed in either**  
162 **phase I or phase II of the process. Points assigned in phase I of the**  
163 **evaluation process shall not carry forward to phase II of the**  
164 **process. All qualified design-builders shall be ranked on points given**  
165 **in phases II and III only.**

166 **11. The political subdivision shall have discretion to disqualify**  
167 **any design-builder who, in the political subdivision's opinion, lacks the**

168 minimum qualifications required to perform the work.

169           12. Once a sufficient number of no more than five and no fewer  
170 than two qualified design-builders have been selected, the design-  
171 builders shall have a specified amount of time in which to assemble  
172 phase II and phase III proposals.

173           13. Phase II of the process shall be conducted as follows:

174           (1) The political subdivision shall invite the top qualified design-  
175 builders to participate in phase II of the process;

176           (2) A design-builder shall submit its design for the project to the  
177 level of detail required in the request for proposal. The design  
178 proposal shall demonstrate compliance with the requirements set out  
179 in the request for proposal;

180           (3) The ability of the design-builder to meet the schedule for  
181 completing a project as specified by the political subdivision may be  
182 considered as an element of evaluation in phase II;

183           (4) Up to twenty percent of the points awarded to each design-  
184 builder in phase II may be based on each design-builder's qualifications  
185 and ability to design, contract, and deliver the project on time and  
186 within the budget of the political subdivision;

187           (5) Under no circumstances shall the design proposal contain any  
188 reference to the cost of the proposal; and

189           (6) The submitted designs shall be evaluated and assigned points  
190 in accordance with the requirements of the request for proposal. Phase  
191 II shall account for not less than forty percent of the total point score  
192 as specified in the request for proposal.

193           14. Phase III shall be conducted as follows:

194           (1) The phase III proposal shall provide a firm, fixed cost of  
195 design and construction. The proposal shall be accompanied by bid  
196 security and any other items, such as statements of minority  
197 participation as required by the request for proposal;

198           (2) Cost proposals shall be submitted in accordance with the  
199 instructions of the request for proposal. The political subdivision shall  
200 reject any proposal that is not submitted on time. Phase III shall  
201 account for not less than forty percent of the total point score as  
202 specified in the request for proposal;

203           (3) Proposals for phase II and phase III shall be submitted  
204 concurrently at the time and place specified in the request for

205 proposal, but in separate envelopes or other means of submission. The  
206 phase III cost proposals shall be opened only after the phase II design  
207 proposals have been evaluated and assigned points, ranked in order,  
208 and posted;

209 (4) Cost proposals shall be opened and read aloud at the time  
210 and place specified in the request for proposal. At the same time and  
211 place, the evaluation team shall make public its scoring of phase  
212 II. Cost proposals shall be evaluated in accordance with the  
213 requirements of the request for proposal. In evaluating the cost  
214 proposals, the lowest responsive bidder shall be awarded the total  
215 number of points assigned to be awarded in phase III. For all other  
216 bidders, cost points shall be calculated by reducing the maximum  
217 points available in phase III by at least one percent for each percentage  
218 point by which the bidder exceeds the lowest bid and the points  
219 assigned shall be added to the points assigned for phase II for each  
220 design-builder;

221 (5) If the political subdivision determines that it is not in the  
222 best interest of the political subdivision to proceed with the project  
223 pursuant to the proposal offered by the design-builder with the highest  
224 total number of points, the political subdivision shall reject all  
225 proposals. In this event, all qualified and responsive design-builders  
226 with lower point totals shall receive a stipend and the responsive  
227 design-builder with the highest total number of points shall receive an  
228 amount equal to two times the stipend. If the political subdivision  
229 decides to award the project, the responsive design-builder with the  
230 highest number of points shall be awarded the contract; and

231 (6) If all proposals are rejected, the political subdivision may  
232 solicit new proposals using different design criteria, budget  
233 constraints, or qualifications.

234 15. As an inducement to qualified design-builders, the political  
235 subdivision shall pay a reasonable stipend, the amount of which shall  
236 be established in the request for proposal, to each prequalified design-  
237 builder whose proposal is responsive but not accepted. Such stipend  
238 shall be no less than one-half of one percent of the total project  
239 budget. Upon payment of the stipend to any unsuccessful design-  
240 builder, the political subdivision shall acquire a nonexclusive right to  
241 use the design submitted by the design-builder, and the design-builder

242 shall have no further liability for the use of the design by the political  
243 subdivision in any manner. If the design-builder desires to retain all  
244 rights and interest in the design proposed, the design-builder shall  
245 forfeit the stipend.

246 16. As used in this section, "wastewater or water" means any  
247 design-build contract that involves the provision of engineering and  
248 construction services either directly by a party to the contract or  
249 through subcontractors retained by a party to the contract for a  
250 wastewater or water storage, conveyance, or treatment facility project.

251 (1) Any political subdivision may enter into a wastewater or  
252 water contract for design-build of a wastewater or water project.

253 (2) In disbursing community development block grants under 42  
254 U.S.C. Sections 5301 to 5321, the department of economic development  
255 shall not reject wastewater or water projects solely for utilizing  
256 wastewater or water contracts.

257 (3) The department of natural resources shall not preclude  
258 wastewater or water design-build contracts from consideration for  
259 funding provided by the water and wastewater loan fund under section  
260 644.122.

261 (4) A political subdivision planning a wastewater or water  
262 design-build project shall retain an engineer duly licensed in this state  
263 to assist in preparing any necessary documents and specifications and  
264 evaluations of design-build proposals.

265 17. The payment bond requirements of section 107.170 shall  
266 apply to the design-build project. All persons furnishing design  
267 services shall be deemed to be covered by the payment bond the same  
268 as any person furnishing labor and materials. The performance bond  
269 for the design-builder shall not need to cover any damages of the type  
270 specified to be covered by the professional liability insurance in an  
271 amount established by the political subdivision in the request for  
272 proposals.

273 18. Any person or firm performing architectural, engineering,  
274 landscape architecture, or land-surveying services for the design-  
275 builder on the design-build project shall be duly licensed or authorized  
276 in this state to provide such services as required by chapter 327.

277 19. Under section 327.465, any design-builder that enters into a  
278 design-build contract with a political subdivision is exempt from the

279 requirement that such person or entity hold a license or that such  
280 corporation hold a certificate of authority if the architectural,  
281 engineering, or land-surveying services to be performed under the  
282 design-build contract are performed through subcontracts or joint  
283 ventures with properly licensed or authorized persons or entities, and  
284 not performed by the design-builder or its own employees.

285       **20. This section shall not apply to:**

286       **(1) Any metropolitan sewer district established under article VI,**  
287 **section 30(a) of the Constitution of Missouri; or**

288       **(2) Any special charter city, or any city or county governed by**  
289 **home rule under article VI, section 18 or 19 of the Constitution of**  
290 **Missouri that has adopted a design-build process via ordinance, rule,**  
291 **or regulation.**

292       **21. The authority to use design-build and design-build contracts**  
293 **provided under this section shall expire September 1, 2026.**

68.057. Any expenditure made by a port authority, as defined in section  
2 68.205, that is over twenty-five thousand dollars[, including professional service  
3 contracts,] shall be competitively bid. **This section shall not apply to**  
4 **expenditures made to procure professional services, and procurement**  
5 **of such services shall adhere to the provisions of sections 8.285 to 8.291.**

197.065. 1. The department of health and senior services shall  
2 promulgate regulations for the construction and renovation of hospitals  
3 that include life safety code standards for hospitals that exclusively  
4 reflect the life safety code standards imposed by the federal Medicare  
5 program under Title XVIII of the Social Security Act and its conditions  
6 of participation in the Code of Federal Regulations.

7       **2. The department shall not require a hospital to meet the**  
8 **standards contained in the Facility Guidelines Institute for the Design**  
9 **and Construction of Health Care Facilities but any hospital that**  
10 **complies with the 2010 or later version of such guidelines for the**  
11 **construction and renovation of hospitals shall not be required to**  
12 **comply with any regulation that is inconsistent or conflicts in any way**  
13 **with such guidelines.**

14       **3. The department may waive enforcement of the standards for**  
15 **licensed hospitals imposed by this section if the department determines**  
16 **that:**

17       **(1) Compliance with those specific standards would result in**

18 **unreasonable hardship for the facility and if the health and safety of**  
19 **hospital patients would not be compromised by such waiver or waivers;**  
20 **or**

21 **(2) The hospital has used other standards that provide for**  
22 **equivalent design criteria.**

23 **4. Regulations promulgated by the department to establish and**  
24 **enforce hospital licensure regulations under this chapter that conflict**  
25 **with the standards established under subsections 1 and 3 of this section**  
26 **shall lapse on and after January 1, 2018.**

27 **5. Any rule or portion of a rule, as that term is defined in section**  
28 **536.010, that is created under the authority delegated in this section**  
29 **shall become effective only if it complies with and is subject to all of**  
30 **the provisions of chapter 536 and, if applicable, section 536.028. This**  
31 **section and chapter 536 are nonseverable, and if any of the powers**  
32 **vested with the general assembly pursuant to chapter 536 to review, to**  
33 **delay the effective date, or to disapprove and annul a rule are**  
34 **subsequently held unconstitutional, then the grant of rulemaking**  
35 **authority and any rule proposed or adopted after August 28, 2016, shall**  
36 **be invalid and void.**

536.031. 1. There is established a publication to be known as the "Code  
2 of State Regulations", which shall be published in a format and medium as  
3 prescribed and in writing upon request by the secretary of state as soon as  
4 practicable after ninety days following January 1, 1976, and may be republished  
5 from time to time thereafter as determined by the secretary of state.

6 2. The code of state regulations shall contain the full text of all rules of  
7 state agencies in force and effect upon the effective date of the first publication  
8 thereof, and effective September 1, 1990, it shall be revised no less frequently  
9 than monthly thereafter so as to include all rules of state agencies subsequently  
10 made, amended or rescinded. The code may also include citations, references, or  
11 annotations, prepared by the state agency adopting the rule or by the secretary  
12 of state, to any intraagency ruling, attorney general's opinion, determination,  
13 decisions, order, or other action of the administrative hearing commission, or any  
14 determination, decision, order, or other action of a court interpreting, applying,  
15 discussing, distinguishing, or otherwise affecting any rule published in the code.

16 3. The code of state regulations shall be published in looseleaf form in one  
17 or more volumes upon request and a format and medium as prescribed by the

18 secretary of state with an appropriate index, and revisions in the text and index  
19 may be made by the secretary of state as necessary and provided in written  
20 format upon request.

21 4. An agency may incorporate by reference rules, regulations, standards,  
22 and guidelines of an agency of the United States or a nationally or state-  
23 recognized organization or association without publishing the material in  
24 full. The reference in the agency rules shall fully identify the incorporated  
25 material by publisher, address, and date in order to specify how a copy of the  
26 material may be obtained, and shall state that the referenced rule, regulation,  
27 standard, or guideline does not include any later amendments or additions;  
28 **except that, hospital licensure regulations governing life safety code**  
29 **standards promulgated under this chapter and chapter 197 to**  
30 **implement section 197.065 may incorporate, by reference, later**  
31 **additions or amendments to such rules, regulations, standards, or**  
32 **guidelines as needed to consistently apply current standards of safety**  
33 **and practice.** The agency adopting a rule, regulation, standard, or guideline  
34 under this section shall maintain a copy of the referenced rule, regulation,  
35 standard, or guideline at the headquarters of the agency and shall make it  
36 available to the public for inspection and copying at no more than the actual cost  
37 of reproduction. The secretary of state may omit from the code of state  
38 regulations such material incorporated by reference in any rule the publication  
39 of which would be unduly cumbersome or expensive.

40 5. The courts of this state shall take judicial notice, without proof, of the  
41 contents of the code of state regulations.

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