

FIRST REGULAR SESSION  
[ C O R R E C T E D ]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 167**  
**100TH GENERAL ASSEMBLY**

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Reported from the Committee on Insurance and Banking, February 21, 2019, with recommendation that the Senate Committee Substitute do pass.

0888S.04C

ADRIANE D. CROUSE, Secretary.

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**AN ACT**

To repeal section 107.170, RSMo, and to enact in lieu thereof one new section relating to contracts for construction services.

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

Section A. Section 107.170, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 107.170, to read as follows:  
107.170. 1. As used in this section, the following terms mean:  
2 (1) "Contractor"[,]:  
3 (a) A person or business entity who:  
4 a. Provides construction services under contract to a public entity[.]; or  
5 b. **Contracts, provides, or arranges for construction services on**  
6 **a public works project for a nongovernmental purpose when acting as**  
7 **a lessee, agent, designee, or representative of a public entity;**  
8 (b) Contractor [specifically does] **shall** not include:  
9 a. Professional engineers, architects or land surveyors licensed pursuant  
10 to chapter 327[.];  
11 b. Those who provide environmental assessment services; or  
12 c. Those who design, create or otherwise provide works of art under a  
13 city's formally established program for the acquisition and installation of works  
14 of art and other aesthetic adornments to public buildings and property;  
15 d. **A construction manager not-at-risk within the meaning of**  
16 **section 8.675, or who does not otherwise enter into contracts with**  
17 **contractors for the furnishing of labor, materials, or services to the**

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

18 **public works project;**

19 (2) "Public entity", any official, board, commission or agency of this state  
20 or any county, city, town, township, school, road district or other political  
21 subdivision of this state;

22 (3) "Public works", the erection, construction, alteration, repair or  
23 improvement of any building, road, street, public utility or other public facility  
24 owned by the public entity, **including work for nongovernmental purposes.**

25 2. It is hereby made the duty of all public entities in this state, in making  
26 contracts for public works, the cost of which is estimated to exceed fifty thousand  
27 dollars, to be performed for:

28 (a) The public entity; or

29 (b) **The public entity's lessee, agent, designee, or representative**  
30 **on work for nongovernmental purposes,**

31 to require every contractor for such work to furnish to the public entity a bond  
32 with good and sufficient sureties, in an amount fixed by the public entity[,  
33 and]. Such bond, among other conditions, shall be conditioned for the payment  
34 of any and all materials, incorporated, consumed or used in connection with the  
35 construction of such work[, and]; all insurance premiums, both for compensation,  
36 and for all other kinds of insurance, **on** said work[,]; and for all labor performed  
37 in such work whether by **a** subcontractor, **a supplier at any tier**, or otherwise.

38 3. All bonds executed and furnished under the provisions of this section  
39 shall be deemed to contain the requirements and conditions as herein set out,  
40 regardless of whether the same be set forth in said bond, or of any terms or  
41 provisions of said bond to the contrary notwithstanding.

42 4. Nothing in this section shall be construed to require a member of the  
43 school board of any public school district of this state to independently confirm  
44 the existence or solvency of any bonding company if a contractor represents to the  
45 member that the bonding company is solvent and that the representations made  
46 in the purported bond are true and correct. This subsection shall not relieve from  
47 any liability any school board member who has any actual knowledge of the  
48 insolvency of any bonding company, or any school board member who does not act  
49 in good faith in complying with the provisions of subsection 2 of this section.

50 5. A public entity may defend, save harmless and indemnify any of its  
51 officers and employees, whether elective or appointive, against any claim or  
52 demand, whether groundless or otherwise arising out of an alleged act or  
53 omission occurring in the performance of a duty under this section. The

54 provisions of this subsection do not apply in case of malfeasance in office or  
55 willful or wanton neglect of duty.

56       **6. Nothing in this section shall be deemed to require any**  
57 **contractor who provides construction services for a public works**  
58 **project used for nongovernmental purposes and who contracts with a**  
59 **public entity's lessee, agent, designee, or representative on such public**  
60 **works project used for nongovernmental purposes to furnish a bond**  
61 **when the public entity's lessee, agent, designee, or representative is**  
62 **required under this section to furnish a bond.**

Unofficial ✓

Bill

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