

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 167

100TH GENERAL ASSEMBLY

2019

0888H.05T

AN ACT

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

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- Section A. Section 107.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 107.170, to read as follows: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

19 **public works project;**

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

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

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

29 (1) The public entity; **or**

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

32 to require every contractor for such work to furnish to the public entity a bond
33 with good and sufficient sureties, in an amount fixed by the public entity[,
34 and]. Such bond, among other conditions, shall be conditioned for the payment
35 of any and all materials, incorporated, consumed or used in connection with the
36 construction of such work[, and]; all insurance premiums, both for compensation,
37 and for all other kinds of insurance, **on said work[.];** and for all labor performed
38 in such work whether by **a subcontractor, a supplier at any tier,** or
39 otherwise. **Remote suppliers shall not be entitled to recovery under the**
40 **bond required by this section, unless such suppliers shall have given**
41 **written notice to the contractor that it has not been paid within ninety**
42 **days of the time the supplier last supplied materials on the public**
43 **works project. For purposes of this provision, a "remote supplier" is**
44 **any material supplier to a public works project having a contract with**
45 **a second, or lower, tier subcontractor, or with another material**
46 **supplier of any tier.**

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

51 4. Nothing in this section shall be construed to require a member of the
52 school board of any public school district of this state to independently confirm
53 the existence or solvency of any bonding company if a contractor represents to the
54 member that the bonding company is solvent and that the representations made

55 in the purported bond are true and correct. This subsection shall not relieve from
56 any liability any school board member who has any actual knowledge of the
57 insolvency of any bonding company, or any school board member who does not act
58 in good faith in complying with the provisions of subsection 2 of this section.

59 5. A public entity may defend, save harmless and indemnify any of its
60 officers and employees, whether elective or appointive, against any claim or
61 demand, whether groundless or otherwise arising out of an alleged act or
62 omission occurring in the performance of a duty under this section. The
63 provisions of this subsection do not apply in case of malfeasance in office or
64 willful or wanton neglect of duty.

65 **6. Nothing in this section shall be deemed to require any**
66 **contractor who provides construction services for a public works**
67 **project used for nongovernmental purposes and who contracts with a**
68 **public entity's lessee, agent, designee, or representative on such public**
69 **works project used for nongovernmental purposes to furnish a bond**
70 **when the public entity's lessee, agent, designee, or representative is**
71 **required under this section to furnish a bond.**

72 **7. The providing of a bond under this section shall preclude the**
73 **filing of a mechanic's lien under chapter 429 by any subcontractor or**
74 **supplier. Any mechanic's lien filed in violation hereof shall be void and**
75 **unenforceable and shall be summarily discharged by a judge of the**
76 **county in which the mechanic's lien if filed.**

✓

Copy