

HOUSE

AMENDMENT NO. ___

Offered by

of

1 AMEND House Committee Substitute for Senate Committee Substitute
2 for Senate Bill Nos. 45 & 39, Pages 1 and 2, Section 226.527,
3 Lines 1 to 31, by deleting all of said lines; and

4 Further amend said bill, Page 5, Section 226.580, Line 84,
5 by inserting after all of said line the following:

6 "227.103. 1. Notwithstanding any other provision of law to
7 the contrary, the commission is authorized to accept an annual
8 bid bond for its construction and maintenance projects. The
9 commission shall prescribe the form and content of an annual bid
10 bond pursuant to the procedures set forth in the Missouri
11 standard specifications for highway construction, or its
12 successor.

13 2. The commission is authorized to promulgate
14 administrative rules to administer the provision in this section.
15 Any rule or portion of a rule, as that term is defined in section
16 536.010, RSMo, that is created under the authority delegated in

Action Taken _____

Date _____

1 this section shall become effective only if it complies with and
2 is subject to all of the provisions of chapter 536, RSMo, and, if
3 applicable, section 536.028, RSMo. This section and chapter 536,
4 RSMo, are nonseverable and if any of the powers vested with the
5 general assembly pursuant to chapter 536, RSMo, to review, to
6 delay the effective date, or to disapprove and annul a rule are
7 subsequently held unconstitutional, then the grant of rulemaking
8 authority and any rule proposed or adopted after August 28, 2007,
9 shall be invalid and void.

10 227.107. 1. Notwithstanding any provision of section
11 227.100 to the contrary, as an alternative to the requirements
12 and procedures specified by sections 227.040 to [227.100]
13 227.105, the state highways and transportation commission is
14 authorized to enter into highway design-build project contracts.
15 The authority granted to the state highways and transportation
16 commission by this section shall be limited to a total of three
17 design- build project contracts. Two design-build projects
18 authorized by this section shall be selected by the highways and
19 transportation commission from 1992 fifteen year plan projects.
20 Authority to enter into design-build projects granted by this
21 section shall expire on July 1, 2012, unless extended by statute
22 or upon completion of three projects, whichever is first.

23 2. For the purpose of this section a "design-builder" is
24 defined as an individual, corporation, partnership, joint venture

1 or other entity, including combinations of such entities making a
2 proposal to perform or performing a design-build highway project
3 contract.

4 3. For the purpose of this section, "design-build highway
5 project contract" is defined as the procurement of all materials
6 and services necessary for the design, construction,
7 reconstruction or improvement of a state highway project in a
8 single contract with a design-builder capable of providing the
9 necessary materials and services.

10 4. For the purpose of this section, "highway project" is
11 defined as the design, construction, reconstruction or
12 improvement of highways or bridges under contract with the state
13 highways and transportation commission, which is funded by state,
14 federal or local funds or any combination of such funds.

15 5. In using a design-build highway project contract, the
16 commission shall establish a written procedure by rule for
17 prequalifying design-builders before such design-builders will be
18 allowed to make a proposal on the project.

19 6. In any design-build highway project contract, whether
20 involving state or federal funds, the commission shall require
21 that each person submitting a request for qualifications provide
22 a detailed disadvantaged business enterprise participation plan.
23 The plan shall provide information describing the experience of
24 the person in meeting disadvantaged business enterprise

1 participation goals, how the person will meet the department of
2 transportation's disadvantaged business enterprise participation
3 goal and such other qualifications that the commission considers
4 to be in the best interest of the state.

5 7. The commission is authorized to issue a request for
6 proposals to a maximum of five design-builders prequalified in
7 accordance with subsection 5 of this section.

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

10 9. The bid bond and performance bond requirements of
11 section 227.100 and the payment bond requirements of section
12 107.170, RSMo, shall apply to the design-build highway project.

13 10. The requirements of subsection 9 of this section may be
14 modified by the commission for any design-build highway project
15 contract which is designated by the commission as a "design-
16 build-finance-maintain" project. For such projects, the
17 commission shall require the design-builder to provide or cause
18 to be provided such bonds in such terms, durations, and amounts
19 as it may determine to be adequate for its protection and
20 provided by a surety or sureties satisfactory to the commission,
21 including but not limited to:

22 (1) A bid or proposal bond in an amount of not less than
23 five million dollars;

24 (2) A performance bond or bonds for the construction period

1 specified in the design-build highway project contract in an
2 amount of not less than the maximum cost of construction work
3 performed or caused to be performed by the design-builder in any
4 calendar year of such period and applicable for each year of such
5 period; and

6 (3) A payment bond or bonds that shall be enforceable under
7 section 522.300, RSMo, for the protection of all persons
8 supplying labor and material in carrying out the work provided
9 for in the design-build highway project contract. The amount of
10 the payment bond or bonds shall equal the total amount payable
11 under the terms of the design-build highway project contract
12 unless the commission determines in writing supported by specific
13 findings that a payment bond or bonds in such amount is
14 impractical, in which case the commission shall establish the
15 amount of the payment bond or bonds; except that the amount of
16 the payment bond or bonds shall not be less than the amount of
17 the performance bond or bonds.

18 [10.] 11. The commission is authorized to prescribe the
19 form of the contracts for the work.

20 [11.] 12. The commission is empowered to make all final
21 decisions concerning the performance of the work under the
22 design-build highway project contract, including claims for
23 additional time and compensation.

24 [12.] 13. The provisions of sections 8.285 to 8.291, RSMo,

1 shall not apply to the procurement of architectural, engineering
2 or land surveying services for the design-build highway project,
3 except that any person providing architectural, engineering or
4 land surveying services for the design- builder on the
5 design-build highway project must be licensed in Missouri to
6 provide such services.

7 [13.] 14. The commission shall pay a reasonable stipend to
8 prequalified responsive design-builders who submit a proposal,
9 but are not awarded the design-build highway project.

10 [14.] 15. The commission shall comply with the provisions
11 of any act of congress or any regulations of any federal
12 administrative agency which provides and authorizes the use of
13 federal funds for highway projects using the design-build
14 process.

15 [15.] 16. The commission shall promulgate administrative
16 rules to implement this section or to secure federal funds. Such
17 rules shall be published for comment in the Missouri Register and
18 shall include prequalification criteria, the make-up of the
19 prequalification review team, specifications for the design
20 criteria package, the method of advertising, receiving and
21 evaluating proposals from design-builders, the criteria for
22 awarding the design-build highway project based on the design
23 criteria package and a separate proposal stating the cost of
24 construction, and other methods, procedures and criteria

1 necessary to administer this section.

2 [16.] 17. The commission shall make a status report to the
3 members of the general assembly and the governor following the
4 award of the design-build project, as an individual component of
5 the annual report submitted by the commission to the joint
6 transportation oversight committee in accordance with the
7 provisions of section 21.795, RSMo. The annual report prior to
8 advertisement of the design-build highway project contracts shall
9 state the goals of the project in reducing costs and/or the time
10 of completion for the project in comparison to the
11 design-bid-build method of construction and objective
12 measurements to be utilized in determining achievement of such
13 goals. Subsequent annual reports shall include: the time
14 estimated for design and construction of different phases or
15 segments of the project and the actual time required to complete
16 such work during the period; the amount of each progress payment
17 to the design-builder during the period and the percentage and a
18 description of the portion of the project completed regarding
19 such payment; the number and a description of design change
20 orders issued during the period and the cost of each such change
21 order; upon substantial and final completion, the total cost of
22 the design-build highway project with a breakdown of costs for
23 design and construction; and such other measurements as specified
24 by rule. The annual report immediately after final completion of

1 the project shall state an assessment of the advantages and
2 disadvantages of the design-build method of contracting for
3 highway and bridge projects in comparison to the design-
4 bid-build method of contracting and an assessment of whether the
5 goals of the project in reducing costs and/or the time of
6 completion of the project were met.

7 [17.] 18. The commission shall give public notice of a
8 request for qualifications in at least two public newspapers that
9 are distributed wholly or in part in this state and at least one
10 construction industry trade publication that is distributed
11 nationally.

12 [18.] 19. The commission shall publish its cost estimates
13 of the design- build highway project award and the project
14 completion date along with its public notice of a request for
15 qualifications of the design-build project.

16 [19.] 20. If the commission fails to receive statements of
17 qualifications from at least two design-builders in response to a
18 request for qualifications under subsection 5 of this section or
19 to receive at least two responsive submissions from
20 design-builders considered qualified[, submissions shall not be
21 opened and it shall] for a design-build highway project contract,
22 the design build procurement process shall be suspended and the
23 commission may readvertise the project.

24 21. Notwithstanding the provisions of subsection 20 of this

1 section to the contrary, the commission may use the following
2 procurement process for a design-build highway project contract
3 which is not designated by the commission as a "design-build-
4 finance-maintain" project:

5 _____ (1) In the event the commission issues a request for
6 qualifications under subsection 5 of this section at least twice
7 for such design-build highway project contract, and it receives a
8 statement of qualifications from only one design builder for such
9 contract, the commission may negotiate in good faith with the
10 design-builder for such contract based upon the best value to the
11 state;

12 _____ (2) In the event the commission issues a request for
13 proposals under subsection 7 of this section at least twice for
14 such design-build highway project contract, and it receives only
15 one responsive submission for such contract, the commission may
16 negotiate in good faith with the design-builder for such contract
17 based upon the best value to the state;

18 _____ (3) At any time prior to the execution of the design-build
19 highway project contract with the design-builder under this
20 subsection, if the commission is not satisfied with the results
21 of the negotiations with the design-builder, it may terminate the
22 negotiations and reject any and all submissions and proposals by
23 the design-builder."; and

24 Further amend said title, enacting clause and intersectional

1 references accordingly.