

SENATE SUBSTITUTE

FOR

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1280

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to a peer review process for licensed architects, landscape architects, land surveyors, and engineers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.033, to read as follows:

537.033. 1. As used in this section, unless the context clearly indicates otherwise, the following words and terms shall have the meanings indicated:

(1) "Design professional", an architect, landscape architect, professional land surveyor, or professional engineer licensed under the provisions of chapter 327 or any corporation authorized to practice architecture, landscape architecture, land surveying, or engineering under section 327.401 while acting within their scope of practice;

(2) "Lessons learned", internal meetings, classes, publications in any medium, presentations, lectures, or other

1 means of teaching and communicating after substantial completion
2 of the project which are conducted solely and exclusively by and
3 with the employees, partners, and coworkers of the design
4 professional who prepared the project's design for the purpose of
5 learning best practices and reducing errors and omissions in
6 design documents and procedures. Lessons learned shall not
7 include presentations, lectures, teaching, or communication made
8 to or by third parties who are not employees, partners, and
9 coworkers of the design professional whose work is being
10 evaluated and discussed;

11 (3) "Peer review process", a process through which design
12 professionals evaluate, maintain, or monitor the quality and
13 utilization of architectural, landscape architectural, land
14 surveying, or engineering services, prepare internal lessons
15 learned, or exercise any combination of such responsibilities;

16 (4) "Substantial completion", the construction of the
17 project covered by the design professional's design documents has
18 reached substantial completion, as that term is defined in
19 section 436.327.

20 2. A peer review process shall only be performed by a
21 design professional licensed in any jurisdiction in the United
22 States in the same profession as would be required under chapter
23 327 to prepare the design documents being reviewed, or in a case
24 requiring multiple professions, by a person or persons holding
25 the proper licenses. A peer review process may be performed by
26 one or more design professionals appointed by the partners,
27 shareholders, board of directors, chief executive officer,
28 quality control director, or employed design professionals of a

1 partnership or of a corporation authorized under section 327.401
2 to practice architecture, landscape architecture, land surveying,
3 or engineering, or by the owner of a sole proprietorship engaged
4 in one or more of such professions. Any individual identified in
5 this subsection and performing a peer review shall be deemed a
6 peer reviewer.

7 3. Each peer reviewer described in this subsection shall be
8 immune from civil liability for such acts so long as the acts are
9 performed in good faith, without malice, and are reasonably
10 related to the scope of inquiry of the peer review process. The
11 immunity in this subsection is intended to cover only outside
12 peer reviews by a third-party design professional who is not an
13 employee, coworker, or partner of the design professional whose
14 design is being peer reviewed before substantial completion of
15 the project and who has no other role in the project besides
16 performing the peer review.

17 4. This section does not provide immunity to any in-house
18 peer reviewer when performed by employees, coworkers, or partners
19 of the design professional who prepares the design, nor are any
20 such documents or peer review comments, other than lessons
21 learned, inadmissible into evidence in any judicial or
22 administrative action.

23 5. Except for documents related to lessons learned, the
24 interviews, memoranda, proceedings, findings, deliberations,
25 reports, and minutes of the peer review process, or the existence
26 of the same, concerning the professional services provided to a
27 client or member of the public are subject to discovery,
28 subpoena, or other means of legal compulsion for their release to

1 any person or entity and shall be admissible into evidence in any
2 judicial or administrative action for failure to provide
3 appropriate architectural, landscape architectural, land
4 surveying, or engineering services, subject to applicable rules
5 of the court or tribunal. Except as otherwise provided in this
6 section, no person who was in attendance at, or participated in,
7 any lessons learned process or proceedings shall be permitted or
8 required to disclose any information acquired in connection with
9 or in the course of such proceeding, or to disclose any opinion,
10 recommendation, or evaluation made in a lessons learned process
11 or proceeding; provided, however, that information otherwise
12 discoverable or admissible from original sources is not to be
13 construed as immune from discovery or use in any proceeding
14 merely because it was presented during a lessons learned process
15 or proceeding nor is a member, employee, or agent involved in any
16 such process or proceeding, or other person appearing before a
17 peer reviewer, to be prevented from testifying as to matters
18 within his or her personal knowledge and in accordance with the
19 other provisions of this section, but such witness cannot be
20 questioned about a lessons learned process or proceeding or about
21 opinions formed as a result of such process or proceeding. The
22 disclosure of any memoranda, proceedings, reports, or minutes of
23 a lessons learned proceeding to any person or entity, including
24 but not limited to governmental agencies, professional
25 accrediting agencies, or other design professionals, whether
26 proper or improper, shall not waive or have any effect upon its
27 confidentiality, nondiscoverability, or nonadmissibility.

28 6. Nothing in this section shall limit authority otherwise

1 provided by law of the Missouri board for architects,
2 professional engineers, professional land surveyors, and
3 landscape architects to obtain information by subpoena or other
4 authorized process from a peer reviewer or to require disclosure
5 of otherwise confidential information relating to matters and
6 investigations within the jurisdiction of such licensing board.

7 7. The provisions of this section shall expire on January
8 1, 2023, unless reauthorized by an act of the general assembly.
9 The provisions of this section shall continue to apply to peer
10 reviews and lessons learned proceedings performed prior to the
11 expiration date of this section.