

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1280

96TH GENERAL ASSEMBLY

4884S.05T

2012

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
2 known as section 537.033, to read as follows:

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

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

7 **(2) "Lessons learned", internal meetings, classes, publications in any medium,
8 presentations, lectures, or other means of teaching and communicating after substantial
9 completion of the project which are conducted solely and exclusively by and with the
10 employees, partners, and coworkers of the design professional who prepared the project's
11 design for the purpose of learning best practices and reducing errors and omissions in
12 design documents and procedures. Lessons learned shall not include presentations,
13 lectures, teaching, or communication made to or by third parties who are not employees,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 partners, and coworkers of the design professional whose work is being evaluated and discussed;

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

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

22 2. A peer review process shall only be performed by a design professional licensed
23 in any jurisdiction in the United States in the same profession as would be required under
24 chapter 327 to prepare the design documents being reviewed, or in a case requiring
25 multiple professions, by a person or persons holding the proper licenses. A peer review
26 process may be performed by one or more design professionals appointed by the partners,
27 shareholders, board of directors, chief executive officer, quality control director, or
28 employed design professionals of a partnership or of a corporation authorized under
29 section 327.401 to practice architecture, landscape architecture, land surveying, or
30 engineering, or by the owner of a sole proprietorship engaged in one or more of such
31 professions. Any individual identified in this subsection and performing a peer review
32 shall be deemed a peer reviewer.

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

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

44 5. Except for documents related to lessons learned, the interviews, memoranda,
45 proceedings, findings, deliberations, reports, and minutes of the peer review process, or the
46 existence of the same, concerning the professional services provided to a client or member
47 of the public are subject to discovery, subpoena, or other means of legal compulsion for
48 their release to any person or entity and shall be admissible into evidence in any judicial
49 or administrative action for failure to provide appropriate architectural, landscape
50 architectural, land surveying, or engineering services, subject to applicable rules of the

51 **court or tribunal. Except as otherwise provided in this section, no person who was in**
52 **attendance at, or participated in, any lessons learned process or proceedings shall be**
53 **permitted or required to disclose any information acquired in connection with or in the**
54 **course of such proceeding, or to disclose any opinion, recommendation, or evaluation made**
55 **in a lessons learned process or proceeding; provided, however, that information otherwise**
56 **discoverable or admissible from original sources is not to be construed as immune from**
57 **discovery or use in any proceeding merely because it was presented during a lessons**
58 **learned process or proceeding nor is a member, employee, or agent involved in any such**
59 **process or proceeding, or other person appearing before a peer reviewer, to be prevented**
60 **from testifying as to matters within his or her personal knowledge and in accordance with**
61 **the other provisions of this section, but such witness cannot be questioned about a lessons**
62 **learned process or proceeding or about opinions formed as a result of such process or**
63 **proceeding. The disclosure of any memoranda, proceedings, reports, or minutes of a**
64 **lessons learned proceeding to any person or entity, including but not limited to**
65 **governmental agencies, professional accrediting agencies, or other design professionals,**
66 **whether proper or improper, shall not waive or have any effect upon its confidentiality,**
67 **nondiscoverability, or nonadmissibility.**

68 **6. Nothing in this section shall limit authority otherwise provided by law of the**
69 **Missouri board for architects, professional engineers, professional land surveyors, and**
70 **landscape architects to obtain information by subpoena or other authorized process from**
71 **a peer reviewer or to require disclosure of otherwise confidential information relating to**
72 **matters and investigations within the jurisdiction of such licensing board.**

73 **7. The provisions of this section shall expire on January 1, 2023, unless**
74 **reauthorized by an act of the general assembly. The provisions of this section shall**
75 **continue to apply to peer reviews and lessons learned proceedings performed prior to the**
76 **expiration date of this section.**

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