

SECOND REGULAR SESSION

HOUSE BILL NO. 1223

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOPER (158).

Pre-filed January 3, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4164L.01I

AN ACT

To repeal sections 8.007, 8.010, 8.110, 8.115, 8.120, 8.180, 8.200, 8.250, 8.260, 8.310, 8.315, 8.316, 8.320, 8.325, 8.330, 8.340, 8.350, 8.360, 8.380, 8.420, 8.800, 8.803, 8.805, 8.807, 8.812, 8.815, 8.817, 8.823, 8.830, 8.835, 8.837, 8.840, 8.843, 8.845, 8.847, 8.849, 34.030, 37.005, 107.170, and 610.021, RSMo, and to enact in lieu thereof forty-one new sections relating to designing, building, and managing state buildings.

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

Section A. Sections 8.007, 8.010, 8.110, 8.115, 8.120, 8.180, 8.200, 8.250, 8.260, 8.310, 8.315, 8.316, 8.320, 8.325, 8.330, 8.340, 8.350, 8.360, 8.380, 8.420, 8.800, 8.803, 8.805, 8.807, 8.812, 8.815, 8.817, 8.823, 8.830, 8.835, 8.837, 8.840, 8.843, 8.845, 8.847, 8.849, 34.030, 37.005, 107.170, and 610.021, RSMo, are repealed and forty-one new sections enacted in lieu thereof, to be known as sections 8.007, 8.010, 8.110, 8.115, 8.180, 8.200, 8.250, 8.257, 8.259, 8.260, 8.295, 8.310, 8.315, 8.316, 8.320, 8.325, 8.330, 8.340, 8.350, 8.360, 8.380, 8.420, 8.800, 8.805, 8.807, 8.812, 8.1000, 8.1003, 8.1006, 8.1009, 8.1012, 8.1015, 8.1018, 8.1021, 8.1024, 8.1027, 8.1030, 34.030, 37.005, 107.170, and 610.021, to read as follows:

8.007. 1. The commission shall:

- (1) Exercise general supervision of the administration of sections 8.001 to 8.007;
- (2) Evaluate and recommend courses of action on the restoration and preservation of the capitol, the preservation of historical significance of the capitol and the history of the capitol;
- (3) Evaluate and recommend courses of action to ensure accessibility to the capitol for physically disabled persons;

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.

7 (4) Advise, consult, and cooperate with the office of administration, the archives division
8 of the office of the secretary of state, the historic preservation program within the department of
9 natural resources, the division of tourism within the department of economic development and
10 the historical society of Missouri in furtherance of the purposes of sections 8.001 to 8.007;

11 (5) Be authorized to cooperate or collaborate with other state agencies and not-for-profit
12 organizations to publish books and manuals concerning the history of the capitol, its
13 improvement or restoration;

14 (6) Before each September first, recommend options to the governor on budget allocation
15 for improvements or restoration of the capitol premises;

16 (7) Encourage, participate in, or conduct studies, investigations, and research and
17 demonstrations relating to improvement and restoration of the state capitol it may deem
18 advisable and necessary for the discharge of its duties pursuant to sections 8.001 to 8.007; [and]

19 (8) Hold hearings, issue notices of hearings and take testimony as the commission deems
20 necessary;

21 **(9) Assume the responsibilities of the capitol review commission; and**

22 **(10) Develop a written policy establishing guidelines for selection and placement**
23 **of plaques, monuments, statues, pictures, and other articles in or on all buildings and**
24 **grounds under the control of the board of public buildings, and make a determination after**
25 **a review of all requests from entreating parties as to the installation of such articles.**

26 2. The "Second Capitol Commission Fund" is hereby created in the state treasury. Any
27 moneys received from sources other than appropriation by the general assembly, including from
28 private sources, gifts, donations and grants, shall be credited to the second capitol commission
29 fund and shall be appropriated by the general assembly.

30 3. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in
31 the second capitol commission fund shall not be transferred and placed to the credit of the
32 general revenue fund.

33 4. The commission is authorized to accept all gifts, bequests and donations from any
34 source whatsoever. The commission may also apply for and receive grants consistent with the
35 purposes of sections 8.001 to 8.007. All such gifts, bequests, donations and grants shall be used
36 or expended upon appropriation in accordance with their terms or stipulations, and the gifts,
37 bequests, donations or grants may be used or expended for the preservation, restoration and
38 improved accessibility and for promoting the historical significance of the capitol.

8.010. 1. The governor, attorney general and lieutenant governor constitute the board
2 of public buildings. The governor is [chairman] **chair** and the lieutenant governor, secretary.
3 The speaker of the house of representatives and the president pro tempore of the senate shall
4 serve as ex officio members of the board but shall not have the power to vote. The board shall

5 constitute a body corporate and politic. The board has general supervision and charge of [the]
6 **all** public property of the state [at the seat of government], **except property deeded to the**
7 **department of higher education, the conservation commission, and the highways and**
8 **transportation commission**, and other duties imposed on it by law.

9 2. The commissioner of administration shall provide staff support to the board.

8.110. There is hereby created within the office of administration a "Division of
2 Facilities Management["], **Design and Construction"**. **The division shall supervise the**
3 **design, construction, renovations and repair of state facilities, except as otherwise provided**
4 **in sections 8.015 and 8.017 and except for state facilities of institutions of higher education,**
5 **the conservation commission, and the highways and transportation commission, and shall**
6 **review all requests for appropriations for capital improvements.** Except as otherwise
7 provided by law, the director of the division [of facilities management] shall be responsible for
8 the management and operation of office buildings titled in the name of the governor. The
9 director shall exercise all diligence to ensure that all facilities within [his] **the director's**
10 management and control comply with the designated building codes; that they are clean, safe and
11 secure, and in proper repair; and that they are adequately served by all necessary utilities.

8.115. Notwithstanding the provisions of chapter 571, RSMo, the office of
2 administration, division of facilities management, **design and construction** is authorized to
3 provide armed security guards at state-owned or leased facilities except at the seat of government
4 and within the county which contains the seat of government, either through qualified persons
5 employed by the office of administration, or through the use of a contract with a properly
6 licensed firm.

8.180. In all cases where a court or other officer performs any lawful service, at the
2 instance of any director of the division of **facilities management**, design and construction in and
3 about the collection of debts due the state, and the costs have not nor cannot be made out of the
4 defendant, the director of the division of **facilities management**, design and construction shall
5 pay the same fees that other plaintiffs are bound to pay for similar services, and no other.

8.200. The director of the division of **facilities management**, design and construction
2 shall proceed against any sheriff or peace officer who refuses to perform any duty, in the name
3 of the state, in the same way and to the full extent that any other plaintiff in an action might or
4 could do.

8.250. 1. **For purposes of this chapter, the following terms shall mean:**
2 **(1) "Debarment", the disqualification of a contractor for a period of one year until**
3 **reinstated under rules established by the director to receive invitations for bids or requests**
4 **for proposals or the award of any contract by the state, and shall be applicable to selection**

5 of consultants by the state and entry into a contract as a joint venture, contractor,
6 subcontractor, or consultant or subconsultant on state projects;

7 (2) "Project" [for the purposes of this chapter means], the labor as covered under the
8 definition of prevailing hourly rate of wages in subdivision (5) of section 290.210, RSMo,
9 or material necessary for the construction, renovation, or repair of improvements to real property
10 so that the work, when complete, shall be ready for service for its intended purpose and shall
11 require no other work to be a completed system or component.

12 2. All contracts for projects, the cost of which exceeds [twenty-five] **one hundred**
13 thousand dollars, entered into by any officer or agency of this state or of any city containing five
14 hundred thousand inhabitants or more shall be let to the lowest, responsive, responsible bidder
15 or bidders after notice and publication of an advertisement for five days in a daily newspaper in
16 the county where the work is located, or at least twice over a period of ten days or more in a
17 newspaper in the county where the work is located, and [in two daily newspapers] **if the project**
18 **is within seventy-five miles of a city with a population of more than one hundred sixty**
19 **thousand inhabitants, in one daily newspaper** in the state which [do] **does** not have less than
20 fifty thousand daily circulation, and by such other means as are determined to be most likely to
21 reach potential bidders.

22 3. The number of such public bids shall not be restricted or curtailed, but shall be open
23 to all persons complying with the terms upon which the bids are requested or solicited unless
24 [debarred for cause] **the state has imposed debarment on the potential bidder as provided**
25 **in subsection 4 of this section.** No contract shall be awarded when the amount appropriated for
26 same is not sufficient to complete the work ready for service.

27 4. [Dividing a project into component labor or material allocations for the purpose of
28 avoiding bidding or advertising provisions required by this section is specifically prohibited.] **If**
29 **the director believes that cause exists to suspend or debar a contractor, the director shall**
30 **notify the contractor in writing of such basis or cause. The decision of the director**
31 **regarding debarment shall not be a contested case as defined in section 536.010, RSMo.**
32 **The director may impose debarment on a company or firm, or such company's or firm's**
33 **named principals, for any or a combination of the following reasons:**

34 (1) **Commission of fraud or a criminal offense related to obtaining or performing**
35 **a government contract;**

36 (2) **Violation of antitrust laws;**

37 (3) **Commission of embezzlement, theft, forgery, making false statements, or tax**
38 **evasion;**

39 (4) Commission of any other offense indicating a lack of business integrity or
40 business honesty which seriously and directly affects the present responsibility of the
41 contractor;

42 (5) Debarment of the contractor by another state, the federal government, another
43 entity in this state, or the state of Missouri or a political subdivision of this state; or

44 (6) Violations of material contract provisions, including but not limited to failure
45 to perform or negligent performance of any term or standard of one or more contracts.
46 A failure to perform caused by acts beyond the control of the contractor shall not be
47 deemed a basis for debarment.

 8.257. 1. The division of facilities management, design and construction may
2 require prequalification of bidders when the construction project to be bid:

3 (1) Is highly specialized as to the work to be performed;

4 (2) Requires significant experience in the method of construction specified;

5 (3) Requires specialized equipment and experience with such equipment;

6 (4) Requires specific expertise in the installation of sophisticated equipment,
7 systems, or controls;

8 (5) Requires a minimum level of training or certification from specified equipment
9 manufacturers;

10 (6) Requires completion within a critical time frame; or

11 (7) Requires higher than industry standard quality control.

12 2. The director shall select those projects for which prequalification of bidders is
13 appropriate.

14 3. The prequalification process shall be a one-step process. The division shall
15 prepare a request for qualifications for specific selected projects. Notice of the request for
16 qualifications shall be advertised in accordance with section 8.250 and the division shall
17 publish notice of the request for qualifications with a description of the project, the
18 rationale for the decision to prequalify bidders, the procedures for submission, and the
19 selection criteria to be used, which may include:

20 (1) Experience of the bidder with similar projects;

21 (2) Experience of key personnel proposed for the project;

22 (3) A list of recent projects of similar scope and value;

23 (4) Bonding capacity;

24 (5) A list of specified equipment available to the bidder;

25 (6) References;

26 (7) Safety records;

27 (8) Previous project completion records;

28 **(9) Previous project contract change rates; and**

29 **(10) Qualifications of subcontractors proposed for specified areas of work.**

30 **4. (1) An evaluation team shall be selected by the director to evaluate the**
31 **qualifications submitted by all potential bidders. The team shall consist of at least three**
32 **representatives of the division.**

33 **(2) The evaluation team shall review the submissions of the potential bidders and**
34 **assign points to each submission in accordance with the criteria established for the project**
35 **and as set out in the instructions of the request for qualifications.**

36 **(3) All potential bidders obtaining a predetermined number of points shall be**
37 **prequalified to submit a bid on the project on a date specified.**

38 **(4) Only bids from prequalified bidders shall be accepted and opened. Bid**
39 **evaluation shall be on the basis of the lowest, responsive, responsible bidder.**

8.259. The director of the division of facilities management, design and construction
2 **may waive the requirement of competitive bids for construction projects if the director**
3 **determines that a threat to life, property, public health, or public safety exists, or when**
4 **immediate projects are necessary for repairs to state property to protect against further**
5 **loss of or damage to state property, to prevent or minimize serious disruption in state**
6 **services, or to ensure the integrity of state records. Emergency contracts for construction**
7 **shall be made with as much competition as is practicable under the circumstances.**

 8.260. All appropriations made by the general assembly amounting to one hundred
2 thousand dollars or more for the construction, renovation, or repair of facilities shall be expended
3 in the following manner:

4 (1) The agency requesting payment shall provide the commissioner of administration
5 with satisfactory evidence that a bona fide contract, procured in accordance with all applicable
6 procedures, exists for the work for which payment is requested;

7 (2) All requests for payment shall be approved by the architect or engineer registered to
8 practice in the state of Missouri who designed the project or who has been assigned to oversee
9 it;

10 (3) In order to guarantee completion of the contract, the agency or officer shall retain a
11 portion of the contract value in accordance with the provisions of section 34.057, RSMo;

12 (4) A contractor may be paid for materials delivered to the site or to a storage facility
13 approved by the director of the division of **facilities management**, design and construction as
14 having adequate safeguards against loss, theft or conversion.

15

16 In no case shall the amount contracted for exceed the amount appropriated by the general
17 assembly for the purpose.

2 **8.295. The commissioner of administration shall negotiate all leases and purchases**
3 **of land, except for such departments which derive their power to acquire lands from the**
4 **Missouri Constitution.**

5 8.310. Any other provision of law to the contrary notwithstanding, no contracts shall
6 be let for design, repair, renovation or construction without approval of the director of the
7 division of **facilities management**, design and construction, and no claim for design, repair,
8 construction or renovation projects under contract shall be accepted for payment by the
9 commissioner of administration without approval by the director of the division of **facilities**
10 **management**, design and construction; except that the department of conservation, the boards
11 of curators of the state university and Lincoln University, the several boards of regents of the
12 state colleges and the boards of trustees of the community junior colleges may contract for
13 architectural and engineering services for the design and supervision of the construction, repair,
14 maintenance or improvement of buildings or institutions and may contract for construction,
15 repair, maintenance or improvement. The director of the division of **facilities management**,
16 design and construction shall not be required to review any claim for payment under any such
17 contract not originally approved by [him] **the director**. No claim under any contract executed
18 by the department of conservation or an institution of higher learning, as provided above, shall
be certified by the commissioner of administration unless the entity making the claim shall
certify in writing that the payment sought is in accordance with the contract executed by the
entity and that the underlying construction, repair, maintenance or improvement conforms with
applicable regulations promulgated by the director pursuant to section 8.320.

2 8.315. The director of **the division of facilities management**, design and construction
3 shall provide technical assistance to the director of the budget with regard to requests for capital
4 improvement appropriations. The director shall review all capital improvement requests,
5 including those made by the institutions of higher learning, the department of conservation or
6 the highway commission, and shall recommend to the director of the budget and the governor
those proposals which should be funded.

2 8.316. The division of **facilities management**, design and construction shall promulgate
3 a method to accurately calculate the replacement cost of all buildings owned by public
4 institutions of higher education. The method shall be developed in cooperation with such
5 institutions and shall include the necessary components and factors to accurately calculate a
6 replacement cost. The division shall utilize a procedure to allow differences to be resolved and
7 may include an alternative calculation where the original cost plus an inflation factor is utilized
to determine a replacement cost value.

2 8.320. The director of the division of **facilities management**, design and construction
3 shall set forth reasonable conditions to be met and procedures to be followed in the repair,

3 maintenance, operation, construction and administration of state facilities. The conditions and
4 procedures shall be codified and filed with the secretary of state in accordance with the
5 provisions of the constitution. No payment shall be made on claims resulting from work
6 performed in violation of these conditions and procedures, as certified by the director of the
7 division of **facilities management**, design and construction.

8.325. 1. In addition to providing the general assembly with estimates of the cost of
2 completing a proposed capital improvement project, the division of **facilities management**,
3 design and construction shall provide the general assembly, at the same time as the division
4 submits the estimate of the capital improvement costs for the proposed capital improvement
5 project, an estimate of the operating costs of such completed capital improvement project for its
6 first full year of operation. Such estimate shall include, but not be limited to, an estimate of the
7 cost of:

8 (1) Personnel directly related to the operation of the completed capital improvement
9 project, such as janitors, security, and other persons who would provide necessary services for
10 the completed project or facility;

11 (2) Utilities for the completed project or facility; and

12 (3) Any maintenance contracts which would be entered into in order to provide services
13 for the completed project or facility, such as elevator maintenance, boiler maintenance, and other
14 similar service contracts with private contractors to provide maintenance services for the
15 completed project or facility.

16 2. The costs estimates required by this section shall clearly indicate the additional
17 operating costs of the building or facility due to the completion of the capital improvement
18 project where such proposed project is for an addition to an existing building or facility.

19 3. Any agency of state government which removes from rental quarters or state-owned
20 buildings because of defective conditions or any other state personnel shall be prevented from
21 reoccupation of those quarters for a period of three years unless such defective conditions are
22 renovated within a reasonable time before reoccupation.

8.330. The director of the division of **facilities management**, design and construction
2 may secure information and data relating to state facilities from all departments and agencies of
3 the state and each department and agency shall furnish information and data when requested by
4 the director of the division of **facilities management**, design and construction. All information
5 and data collected by the director of the division of **facilities management**, design and
6 construction is available at all times to the general assembly upon request.

8.340. The director of the division of **facilities management**, design and construction
2 shall assemble and maintain complete files of information on the repair, utilization, cost and
3 other data for all state facilities, including power plants, pump houses and similar facilities. [He]

4 **The director** shall also assemble and maintain files containing a full legal description of all real
5 estate owned by the state and blueprints of all state facilities.

8.350. The director of the division of **facilities management**, design and construction
2 shall deliver to his **or her** successor all property and papers of every kind in [his] **the director's**
3 possession, relative to the affairs of state, make an inventory thereof, upon which [he] **the**
4 **director** shall take a receipt of his **or her** successor, and deliver the same to the secretary of
5 state.

8.360. The director of the division of **facilities management**, design and construction
2 shall inspect all facilities and report to the general assembly at the commencement of each
3 regular session on their condition, maintenance, repair and utilization.

8.380. 1. The board of public buildings, after project approval by the committee on
2 legislative research of the general assembly, may acquire, construct, erect, equip, furnish,
3 operate, control, manage and regulate a project, as herein defined, if, in the judgment of the
4 board, the project is necessary, advisable, and suitable for the use of the agencies and
5 instrumentalities of the state. The limitation pertaining to population does not apply to energy
6 retrofitting projects.

7 2. The board may use real property now or hereafter belonging to the state as a site for
8 any such project, or acquire by purchase, lease, gift or otherwise the real or personal property that
9 in the judgment of the board is necessary, advisable and suitable for such purpose.

10 3. In acquiring the property the board may condemn any and all rights or property, either
11 public or private, of every kind and character, necessary for the purposes aforesaid, and in the
12 exercise of such power of condemnation, it shall follow the procedure which is now or may
13 hereafter be provided by law for the appropriation of land or other property taken for telegraph,
14 telephone or railroad right-of-way.

15 4. When the board enters into a project authorized by sections 8.370 to 8.450, it shall
16 provide for sufficient space to be included in the project to meet probable future requirements
17 occasioned by the growth and expansion of the state government.

18 5. The board may lease to state agencies and instrumentalities of the state and other
19 political subdivisions of the state under the same terms and conditions prescribed under section
20 8.390. Any such lease shall include a provision requiring the payment of a portion of the costs
21 of operation and maintenance of the project under the formula prescribed under section 8.390.

22 **6. The board may dispose of state-owned property as part of a real estate**
23 **transaction when necessary to complete a time-limited transaction upon request and**
24 **recommendation of the commissioner of administration without approval by the committee**
25 **on legislative research of the general assembly when the general assembly is not convened**
26 **in session.**

8.420. 1. Bonds issued under and pursuant to the provisions of sections 8.370 to 8.450 shall be of such denomination or denominations, shall bear such rate or rates of interest not to exceed fifteen percent per annum, and shall mature at such time or times within forty years from the date thereof, as the board determines. The bonds may be either serial bonds or term bonds.

2. Serial bonds may be issued with or without the reservation of the right to call them for payment and redemption in advance of their maturity, upon the giving of such notice, and with or without a covenant requiring the payment of a premium in the event of such payment and redemption prior to maturity, as the board determines.

3. Term bonds shall contain a reservation of the right to call them for payment and redemption prior to maturity at such time or times and upon the giving of such notice, and upon the payment of such premium, if any, as the board determines.

4. The bonds, when issued, shall be sold at public sale for the best price obtainable after giving such reasonable notice of such sale as may be determined by the board, but in no event shall such bonds be sold for less than ninety-eight percent of the par value thereof, and accrued interest. Any such bonds may be sold to the United States of America or to any agency or instrumentality thereof, at a price not less than par and accrued interest, without public sale and without the giving of notice as herein provided.

5. The bonds, when issued and sold, shall be negotiable instruments within the meaning of the law merchant and the negotiable instruments law, and the interest thereon shall be exempt from income taxes under the laws of the state of Missouri.

6. [After August 13, 1976,] The board shall not issue revenue bonds pursuant to the provisions of sections 8.370 to 8.450 for one or more projects, as defined in section 8.370, in excess of a total par value of [six hundred fifty-five] **seven hundred seventy-five** million dollars.

7. [After August 13, 1976,] Any bonds which may be issued pursuant to the provisions of sections 8.370 to 8.450 shall be issued only for projects which have been approved by a majority of the house members and a majority of the senate members of the committee on legislative research of the general assembly, and the approval by the committee on legislative research required by the provisions of section 8.380 shall be given only in accordance with this provision. For the purposes of approval of a project, the total amount of bonds issued for purposes of energy retrofitting in state-owned facilities shall be treated as a single project.

[8. No more than one hundred fifty million dollars of the net proceeds of the bonds authorized pursuant to sections 8.370 to 8.450 or sections 8.660 to 8.670 may be applied to general revenue in fiscal year 2003.]

8.800. As used in sections 8.800 to [8.825] **8.851**, the following terms mean:

2 (1) "Builder", the prime contractor that hires and coordinates building subcontractors or
3 if there is no prime contractor, the contractor that completes more than fifty percent of the total
4 construction work performed on the building. Construction work includes, but is not limited to,
5 foundation, framing, wiring, plumbing and finishing work;

6 (2) "Department", the department of natural resources;

7 (3) "Designer", the architect, engineer, landscape architect, builder, interior designer or
8 other person who performs the actual design work or is under the direct supervision and
9 responsibility of the person who performs the actual design work;

10 (4) "District heating and cooling systems", heat pump systems which use waste heat from
11 factories, sewage treatment plants, municipal solid waste incineration, lighting and other heat
12 sources in office buildings or which use ambient thermal energy from sources including
13 temperature differences in rivers to provide regional heating or cooling;

14 (5) "Division", the division of **facilities management**, design and construction;

15 (6) "Energy efficiency", the increased productivity or effectiveness of energy resources
16 use, the reduction of energy consumption, or the use of renewable energy sources;

17 (7) "Gray water", all domestic wastewater from a state building except wastewater from
18 urinals, toilets, laboratory sinks, and garbage disposals;

19 (8) "Life cycle costs", the costs associated with the initial construction or renovation and
20 the proposed energy consumption, operation and maintenance costs over the useful life of a state
21 building or over the first twenty-five years after the construction or renovation is completed;

22 (9) "Public building", a building owned or operated by a governmental subdivision of
23 the state, including, but not limited to, a city, county or school district;

24 (10) "Renewable energy source", a source of thermal, mechanical or electrical energy
25 produced from solar, wind, low-head hydropower, biomass, hydrogen or geothermal sources, but
26 not from the incineration of hazardous waste, municipal solid waste or sludge from sewage
27 treatment facilities;

28 (11) "State agency", a department, commission, authority, office, college or university
29 of this state;

30 (12) "State building", a building owned **or operated** by this state [or an agency of this
31 state], **a state agency or department, a state college, or a state university.**

8.805. [1. For the first three years of each completed energy efficiency project for state
2 buildings, to the extent that there are energy savings beyond payment of the financing obligation,
3 required reserves and other expenses associated with project financing, one-half of the energy
4 savings shall be placed in the energy analyses account, created in section 8.807, and one-half
5 shall revert to the general revenue fund. The division, in conjunction with the department, shall
6 establish criteria for determining projected savings from energy efficiency projects in state

7 buildings. The division, in conjunction with all state agencies, shall establish criteria for
8 determining the actual savings which result from a specific energy efficiency project.

9 2. Beginning January 15, 1997, and annually thereafter,] The office of administration and
10 the department of natural resources shall **annually** file a joint report to the house committee on
11 [energy and environment] **conservation and natural resources**, the senate committee on
12 **commerce**, energy and environment, or their successor committees, and the governor on the
13 identification of, planning for and implementation of energy efficiency projects in state
14 buildings.

8.807. 1. The state treasurer shall establish, maintain and administer a special [trust]
2 fund to be administered by the [department] **office of administration** and to be known as the
3 "Energy [Analyses] **Savings Account**", from which the [department] **division** shall use moneys
4 to carry out the energy [analyses] **audits** of state buildings pursuant to sections 8.815 and 8.817.

5 2. All moneys duly authorized and appropriated by the general assembly **for the cost of**
6 **energy for facilities with a guaranteed energy cost savings contract sufficient to pay for**
7 **such contracts**, all moneys received from federal funds, gifts, bequests, donations, any other
8 moneys so designated, all moneys received pursuant to subsection 1 of section 8.805, and all
9 interest earned on and income generated from moneys in the fund shall immediately be paid to
10 and deposited in the energy [analyses] **savings** account.

11 3. The full balance, or any portion thereof, of the energy [analyses] **savings** account shall
12 be available to be used by the [department] **division** to carry out the activities required in
13 [sections 8.815 and 8.817, subject to appropriation] **section 8.235 and subsection 1 of section**
14 **8.237**.

15 4. Except as otherwise provided in sections 8.800 to 8.825, the provisions of section
16 33.080, RSMo, requiring the transfer of unexpended funds to the ordinary revenue funds of the
17 state, shall not apply to funds in the energy [analyses] **savings** account.

8.812. 1. [By January 1, 1995,] The department, in consultation with the division [and
2 the voluntary working group created in subsection 1 of section 8.815], shall establish, by rule,
3 a minimum energy efficiency standard for construction of a state building, substantial renovation
4 of a state building when major energy systems are involved or a building which the state or state
5 agency considers for acquisition or lease. Such standard shall be at least as stringent as the
6 American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)
7 Standard 90, latest revision.

8 2. All design [which is initiated on or after July 1, 1995,] for construction of a state
9 building or substantial renovation of a state building when major energy systems are involved
10 or any building which the state or state agency considers for acquisition or lease [after July 1,
11 1995,] shall meet applicable provisions of the minimum energy efficiency standard.

8.1000. As used in sections 8.1000 to 8.1030, the following terms shall mean:

- 2 **(1) "Construction manager-at-risk", a sole proprietorship, partnership,**
3 **corporation, or other legal entity that assumes the risk for construction, rehabilitation,**
4 **alteration, or repair of a facility at the contracted price as a general contractor and**
5 **provides consultation to the division of facilities management, design and construction**
6 **regarding construction during and after the design of the facility;**
- 7 **(2) "Design-build", a project for which the design and construction services are**
8 **furnished under one contract;**
- 9 **(3) "Design-build contract", a contract between the division and a design-builder,**
10 **to furnish the architecture or engineering and related design services required for a**
11 **specific public construction project and to furnish the labor, materials, and other**
12 **construction services for such public construction project;**
- 13 **(4) "Design-builder", any individual, partnership, joint venture, corporation, or**
14 **other legal entity that furnishes the architectural or engineering services and construction**
15 **services, whether itself or through subcontracts;**
- 16 **(5) "Design criteria consultation" a person, corporation, partnership, or other legal**
17 **entity duly registered and authorized to practice architecture or professional engineering**
18 **in this state under chapter 327, RSMo, who is employed by contract to the division to**
19 **provide professional design and administrative services in connection with the preparation**
20 **of the design criteria package;**
- 21 **(6) "Design criteria package", performance-oriented program, scope and**
22 **specifications for the public construction project sufficient to permit a design-builder to**
23 **prepare a response to the division's request for proposals for a design-build project;**
- 24 **(7) "Design services", services that are:**
 - 25 **(a) Within the practice of professional engineering as defined in section 327.181,**
26 **RSMo, or the practice of architecture as defined in section 327.091, RSMo; or**
 - 27 **(b) Performed by a registered architect or professional engineer in connection with**
28 **the architect's or professional engineer's employment or practice;**
- 29 **(8) "Director", the director of the division of facilities management, design and**
30 **construction;**
- 31 **(9) "Division", the division of facilities management, and design and construction**
32 **within the office of administration;**
- 33 **(10) "Evaluation team", a group of persons selected by the director to evaluate the**
34 **proposals of the design-builders. Such team shall consist of at least two representatives of**
35 **the division of facilities management, design and construction and two representatives of**

36 the using agency. A fifth member shall be selected by the director and shall serve as
37 chairperson to facilitate the evaluation process and to vote only in case of a tie;

38 (11) "Job order contracting" or "(JOC)", a firm fixed priced competitively bid
39 procurement process with an indefinite quantity for small to medium-sized construction
40 and repair projects that do not exceed three hundred thousand dollars for any one project;

41 (12) "Proposal", an offer to enter into a design-build contract;

42 (13) "Public construction project", the process of designing, constructing,
43 reconstructing, altering or renovating a state-owned building;

44 (14) "Request for proposals", the document by which the division solicits proposals
45 for a design-build contract;

46 (15) "Stipend", an amount paid to the unsuccessful proposers to defray the cost of
47 submission of phase II of the design-build proposal.

8.1003. 1. The director shall select those projects for which the use of the design-
2 build procurement or construction manager at risk process is appropriate. In making such
3 determination, the director shall consider:

4 (1) The likelihood of whether the method of procurement serves the public interest
5 by providing substantial savings of time or money over the traditional design-bid-build
6 delivery process;

7 (2) The time available to complete the project and meet the needs of the agency and
8 any need to expedite the delivery process;

9 (3) The type of project and its suitability of such method;

10 (4) The size of the project;

11 (5) The level of agency knowledge and confidence about the project scope and
12 definition;

13 (6) The availability of the using agency staff to manage the project; and

14 (7) The availability of the division staff to manage the project.

8.1006. The division may promulgate rules for the conduct of the design-build,
2 construction manager-at-risk, or JOC process. Any rule or portion of a rule, as that term
3 is defined in section 536.010, RSMo, that is created under the authority delegated in this
4 section shall become effective only if it complies with and is subject to all of the provisions
5 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
6 536, RSMo, are nonseverable and if any of the powers vested with the general assembly
7 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and
8 annul a rule are subsequently held unconstitutional, then the grant of rulemaking
9 authority and any rule proposed or adopted after August 28, 2006, shall be invalid and
10 void.

8.1009. 1. The division may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the division shall follow the procedures prescribed by this section.

2. Before or concurrently with selecting a construction manager-at-risk, the division shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with all applicable state laws and rules. If the engineer or architect is not a full-time employee of the division, the division shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by sections 8.282 to 8.291. The division's engineer or architect for a project shall not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with sections 8.1000 to 8.1030. Nothing in this subsection shall prohibit a division engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

3. The division may provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the division.

4. The division shall select the construction manager-at-risk in either a one-step or two-step process. The division shall prepare:

(1) A request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as applicable;

(2) A statement as to whether the selection process is a one-step or two-step process; and

(3) Other information that may assist the division in its selection of a construction manager-at-risk.

The division shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the division may request, as part of the offeror's proposal, proposed fees

37 and prices for fulfilling the general conditions. If a two-step process is used, the division
38 shall not request fees or prices in step one. In step two, the division may request that five
39 or fewer offerors, selected solely on the basis of qualifications, provided additional
40 information, including the construction manager-at-risk's proposed fee and its price for
41 fulfilling the general conditions.

42 5. The division shall publish the request for qualifications in a manner prescribed
43 by the division.

44 6. At each step, the division shall receive, publicly open, and read aloud the names
45 of the offerors. Within forty-five days after the date of opening the proposals, the division
46 or its representative shall evaluate and rank each proposal submitted in relation to the
47 criteria set forth in the request for proposals.

48 7. The division or its representative shall select the offeror that submits the
49 proposal that offers the best value for the division or using agency based on the published
50 selection criteria and on its ranking evaluation. The division or its representative shall first
51 attempt to negotiate a contract with the selected offeror. If the division or its
52 representative is unable to negotiate a satisfactory contract with the selected offeror, the
53 division or its representative shall, formally and in writing, end negotiations with that
54 offeror and proceed to negotiate with the next offeror in the order of the selection ranking
55 until a contract is reached or negotiations with all ranked offerors end.

56 8. A construction manager-at-risk shall publicly advertise, in the manner
57 prescribed by the division, and receive bids or proposals from trade contractors or
58 subcontractors for the performance of all major elements of the work other than the minor
59 work that may be included in the general conditions. A construction manager-at-risk may
60 seek to perform portions of the work itself if the construction manager-at-risk submits its
61 bid or proposal for those portions of the work in the same manner as all other trade
62 contractors or subcontractors and if the division determines that the construction
63 manager-at-risk's bid or proposal provides the best value for the division or using agency.

64 9. The construction manager-at-risk and the division or its representative shall
65 review all trade contractor or subcontractor bids or proposals in a manner that does not
66 disclose the contents of the bid or proposal during the selection process to a person not
67 employed by the construction manager-at-risk, engineer, architect, or division. All bids or
68 proposals shall be made public after the award of the contract or within seven days after
69 the date of final selection of bids and proposals, whichever is later.

70 10. If the construction manager-at-risk reviews, evaluates, and recommends to the
71 division a bid or proposal from a trade contractor or subcontractor but the division
72 requires another bid or proposal to be accepted, the division may compensate the

73 construction manager-at-risk by a change in price, time, or guaranteed maximum cost for
74 any additional cost and risk that the construction manager-at-risk may incur due to a
75 requirement by the division of facilities management, design and construction that another
76 bid or proposal be accepted.

77 **11. If a selected trade contractor or subcontractor defaults in the performance of**
78 **its work or fails to execute a subcontract after being selected in accordance with this**
79 **section, the construction manager-at-risk may, without advertising, fulfill the contract**
80 **requirements or select a replacement trade contractor or subcontractor to fulfill the**
81 **contract requirements.**

82 **12. If a fixed contract amount or guaranteed maximum price has not been**
83 **determined at the time the contract is awarded, the penal sums of the performance and**
84 **payment bonds delivered to the division shall each be in an amount equal to the project**
85 **budget, as set forth in the request for qualifications. The construction manager-at-risk**
86 **shall deliver the bonds not later than the tenth day after the date the construction manager-**
87 **at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond**
88 **or other financial security acceptable to the division to ensure that the construction**
89 **manager-at-risk will furnish the required performance and payment bonds when a**
90 **guaranteed maximum price is established.**

8.1012. 1. If a design-build process is selected the director shall determine the scope
2 **and level of detail required to permit qualified persons to submit proposals in accordance**
3 **with the request for proposals given the nature of the project.**

4 **2. A design criteria consultant may be employed or retained by the division director**
5 **to assist in preparation of the request for proposal, perform periodic site visits, prepare**
6 **progress reports, review, and approve progress and final pay applications of the design-**
7 **builder, review shop drawings and submittals, decide disputes, interpret the construction**
8 **documents, perform inspections upon substantial and final completion, assist in warranty**
9 **inspections and to provide any other professional service where the director deems it to be**
10 **in the public interest to have an independent design professional assisting with the project**
11 **administration. The consultant shall be selected and its contract negotiated in compliance**
12 **with sections 8.285 to 8.291.**

8.1015. 1. Notice of requests for proposals shall be advertised in accordance with
2 **section 8.250. The division shall publish a notice of a request for proposal with a**
3 **description of the project, the rationale for the decision to use the design-build method of**
4 **procurement, the procedures for submittal and the selection criteria to be used.**

5 **2. The director shall establish in the request for proposal a time, place, and other**
6 **specific instructions for the receipt of proposal. Proposals not submitted in strict**
7 **accordance with such instructions shall be subject to rejection.**

8 **3. A request for proposals shall be prepared for each design-build contract**
9 **containing at a minimum the following elements:**

10 **(1) The procedures to be followed for submitted proposals, the criteria for**
11 **evaluation of proposals and their relative weight and the procedures for making awards;**

12 **(2) The proposed terms and conditions for the design-build contract;**

13 **(3) The design criteria package;**

14 **(4) A description of the drawings, specifications, or other information to be**
15 **submitted with the proposal, with guidance as to the form and level of completeness of the**
16 **drawings, specifications, or other information that will be acceptable;**

17 **(5) A schedule for planned commencement and completion of the design-build**
18 **contract;**

19 **(6) Budget limits for the design-build contract, if any;**

20 **(7) Affirmative action and minority or women business enterprise requirements for**
21 **the design-build contract, if any;**

22 **(8) Requirements including any available ratings for performance bonds, payment**
23 **bonds, and insurance; and**

24 **(9) Any other information that the division in its discretion chooses to supply,**
25 **including, without limitation, surveys, soil reports, drawings of existing structures,**
26 **environmental studies, photographs, or references to public records, or affirmative action**
27 **and minority business enterprise requirements consistent with state and federal law.**

28 **4. The director shall solicit proposals in a three-stage process. Phase I shall be the**
29 **solicitation of qualifications of the design-build team. Phase II shall be the solicitation of**
30 **a technical proposal including conceptual design for the project, and phase III shall be the**
31 **proposal of the construction cost.**

32 **5. The evaluation team shall review the submittals of the proposers and assign**
33 **points to each proposal in accordance with sections 8.1000 to 8.1027 and as set out in the**
34 **instructions of the request for proposals.**

8.1018. 1. Phase I shall require all proposers to submit statement of qualification
2 **which shall include, but not be limited to:**

3 **(1) Demonstrated ability to perform projects comparable in design, scope, and**
4 **complexity;**

5 **(2) References of owners for whom design-build projects have been performed;**

6 (3) Qualifications of personnel who will manage the design and construction aspects
7 of the project; and

8 (4) The names and qualifications of the primary design consultants and the
9 contractors with whom the design-builder proposes to subcontract. The design-builder
10 shall not replace an identified subcontractor or subconsultant without the written approval
11 of the director.

12 2. The evaluation team shall evaluate the qualifications of all proposers in
13 accordance with the instructions of the request for proposal. Architectural and
14 engineering services on the project shall be evaluated in accordance with the requirements
15 of sections 8.285 and 8.291. Qualified proposers selected by the evaluation team may
16 proceed to phase II of the selection. Proposers lacking the necessary qualifications to
17 perform the work shall be disqualified and shall not proceed to phase II of the process.
18 Under no circumstances shall price or fee be a part of the prequalification criteria. Points
19 assigned in the phase I evaluation process shall not carry forward to phase II of the
20 process. All qualified proposers shall be ranked on points given in phases II and III only.

21 3. The director shall have discretion to disqualify any proposer who, in the
22 director's opinion, lacks the minimal qualifications required to perform the work.

23 4. Upon selection of a sufficient number of qualified proposers, the proposers shall
24 have a specified amount of time with which to assemble phase II and phase III proposals.

 8.1021. Phase II of the process shall be conducted as follows:

2 (1) The director shall invite the top five qualified proposers to participate in phase
3 II of the process. If there are not five qualified proposers, all qualified proposers shall be
4 invited to submit phase II. If at least three qualified proposers cannot be identified, the
5 contracting process shall cease;

6 (2) Proposers shall submit their design for the project to the level of detail required
7 in the request for proposal. The design proposal shall demonstrate compliance with the
8 requirements set out in the request for proposal;

9 (3) The ability of the proposer to meet the schedule for completing a project as
10 specified by the owner may be considered as an element of evaluation in phase II;

11 (4) Up to twenty percent of the points awarded to each proposer in phase II may
12 be based on each proposer's qualifications and ability to design, contract, and deliver the
13 project on time and within budget of the office of administration;

14 (5) Under no circumstances shall the design proposal contain any reference to the
15 cost of the proposal; and

16 (6) The design submittals shall be evaluated and assigned points in accordance with
17 the requirements of the request for proposal. Phase II shall account for no less than forty
18 percent of the total points score as specified in the request for proposals.

8.1024. Phase III shall be conducted as follows:

2 (1) The phase III proposal shall provide a firm fixed cost of construction and shall
3 be accompanied by bid security and any other required submittals, such as statements of
4 minority participation as required by the request for proposal;

5 (2) Cost proposals shall be submitted in accordance with the instructions of the
6 request for proposal. The director shall reject any proposal that is not submitted on time.
7 Phase III shall account for not less than forty percent of the total point score as specified
8 in the request for proposal;

9 (3) Proposals for phase II and phase III shall be submitted concurrently at the time
10 and place specified in the request for proposal. The phase III cost proposals shall be
11 opened only after the phase II design proposals have been evaluated and assigned points;

12 (4) Cost proposals shall be opened and read aloud at the time and place specified
13 in the request for proposal. At the same time and place, the evaluation team shall make
14 public its scoring of phase II. Cost proposals shall be evaluated in accordance with the
15 requirements of the request for proposal. In evaluating the cost proposals, the low bidder
16 shall be awarded the total number of points assigned to be awarded in phase III. For all
17 other bidders, cost points shall be calculated by reducing the maximum points available
18 in phase III by two percent or more for each percentage point of the low bid by which the
19 bidder exceeds the low bid and the points assigned shall be added to the points assigned
20 for phase II for each proposer;

21 (5) If the director determines that it is not in the best interest of the state to proceed
22 with the project under the proposal offered by the proposer with the highest total number
23 of points, the director shall reject all proposals. In such event, all qualified proposers with
24 lower point totals shall receive a stipend under section 8.1027 and the proposer with the
25 highest total number of points shall receive an amount equal to two times such stipend. If
26 the director determines to award the project, the responsive proposer with the highest
27 number of points shall be awarded the contract; and

28 (6) If all proposals are rejected, the director may solicit new proposals using
29 different design criteria, budget constraints or qualifications.

8.1027. To induce qualified proposers, the division may pay a reasonable stipend
2 in an amount established in the request for proposal to each prequalified design-builder
3 whose proposal is responsive but not accepted. Upon payment of the stipend to any
4 unsuccessful design-build proposer, the state shall acquire a nonexclusive right to use the

5 design submitted by the proposer and the proposer shall have no further liability for its use
6 by the state in any manner. If the design-build proposer desires to retain all rights and
7 interest in the design proposed, the proposer shall forfeit the stipend.

8.1030. 1. The division may award job order contracting (JOC) for the minor
2 construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring
3 nature but the delivery times are indefinite and indefinite quantities and orders are
4 awarded substantially on the basis of prescribed and prepriced tasks.

5 2. The division may establish contractual unit prices for a JOC by:

6 (1) Specifying one or more published construction unit price books and the
7 applicable divisions or line items; or

8 (2) Providing a list of work items and requiring the offerors to bid or propose one
9 or more coefficients or multipliers to be applied to the price book or work items as the
10 price proposal.

11 3. The division shall advertise for, receive, and publicly open sealed proposals for
12 JOC.

13 4. The division may require offerors to submit additional information besides rates,
14 including experience, past performance, and proposed personnel and methodology.

15 5. The division may award JOC to one or more contractors in connection with each
16 solicitation of bids or proposals.

17 6. An order for a job or project under the JOC shall be signed by the division's
18 representative and the contractor. The order may be a fixed price lump-sum contract
19 based substantially on contractual unit pricing applied to estimated quantities or may be
20 a unit price order based on the quantities and line items delivered.

21 7. The contractor shall provide payment and performance bonds, if required by
22 law, based on the amount or estimated amount of any order.

23 8. The base term of a JOC is for the period and with any renewal options that the
24 division sets forth in the request for proposals. The base term shall not exceed two years
25 and shall not be renewable without further advertisement and solicitation of proposals.

26 9. If a JOC or an order issued under the contract requires engineering or
27 architectural services that constitute the practice of engineering or the practice of
28 architecture, such services shall be provided in accordance with applicable law.

34.030. The commissioner of administration shall purchase all supplies for all
2 departments of the state, except as in this chapter otherwise provided. [The commissioner of
3 administration shall negotiate all leases and purchase all lands, except for such departments as
4 derive their power to acquire lands from the constitution of the state.]

37.005. 1. Except as provided herein, the office of administration shall be [continued
as set forth in house bill 384, seventy-sixth general assembly and shall be] considered as a
department within the meaning used in the Omnibus State Reorganization Act of 1974. The
commissioner of administration shall appoint directors of all major divisions within the office
of administration.

2. The commissioner of administration shall be a member of the governmental
emergency fund committee as ex officio comptroller and the director of the department of
revenue shall be a member [in place of the chief of the planning and construction division].

3. The office of administration is designated the "Missouri State Agency for Surplus
Property" as required by Public Law 152, eighty-first Congress as amended, and related laws for
disposal of surplus federal property. All the powers, duties and functions vested by sections
37.075 and 37.080, and others, are transferred by type I transfer to the office of administration
as well as all property and personnel related to the duties. The commissioner shall integrate the
program of disposal of federal surplus property with the processes of disposal of state surplus
property to provide economical and improved service to state and local agencies of government.
The governor shall fix the amount of bond required by section 37.080. All employees transferred
shall be covered by the provisions of chapter 36, RSMo, and the Omnibus State Reorganization
Act of 1974.

4. The commissioner of administration shall replace the director of revenue as a member
of the board of fund commissioners and assume all duties and responsibilities assigned to the
director of revenue by sections 33.300 to 33.540, RSMo, relating to duties as a member of the
board and matters relating to bonds and bond coupons.

5. [All the powers, duties and functions of the administrative services section, section
33.580, RSMo, and others, are transferred by a type I transfer to the office of administration and
the administrative services section is abolished.

6.] The commissioner of administration shall, in addition to his or her other duties, cause
to be prepared a comprehensive plan of the state's field operations, buildings owned or rented
and the communications systems of state agencies. Such a plan shall place priority on improved
availability of services throughout the state, consolidation of space occupancy and economy in
operations.

[7.] 6. The commissioner of administration shall from time to time examine the space
needs of the agencies of state government and space available and shall, with the approval of the
board of public buildings, assign and reassign space in property owned, leased or otherwise
controlled by the state. Any other law to the contrary notwithstanding, upon a determination by
the commissioner that all or part of any property is in excess of the needs of any state agency,
the commissioner may lease such property to a private or government entity. Any revenue

37 received from the lease of such property shall be deposited into the fund or funds from which
38 moneys for rent, operations or purchase have been appropriated. The commissioner shall
39 establish by rule the procedures for leasing excess property.

40 [8.] 7. The commissioner of administration shall make the selection of a personnel
41 director from the names of the three highest ranking available eligibles as provided in section
42 36.080, RSMo. The personnel advisory board, the personnel division and the personnel director
43 in the office of administration shall retain the functions, duties and powers prescribed in chapter
44 36, RSMo. Members of the personnel advisory board shall be nominated by the commissioner
45 of administration and appointed by the governor with the advice and consent of the senate.

46 [9.] 8. The commissioner of administration is hereby authorized to coordinate and
47 control the acquisition and use of electronic data processing (EDP) and automatic data
48 processing (ADP) in the executive branch of state government. For this purpose, the office of
49 administration will have authority to:

50 (1) Develop and implement a long-range computer facilities plan for the use of EDP and
51 ADP in Missouri state government. Such plan may cover, but is not limited to, operational
52 standards, standards for the establishment, function and management of service centers,
53 coordination of the data processing education, and planning standards for application
54 development and implementation;

55 (2) Approve all additions and deletions of EDP and ADP hardware, software, and
56 support services, and service centers;

57 (3) Establish standards for the development of annual data processing application plans
58 for each of the service centers. These standards shall include review of post-implementation
59 audits. These annual plans shall be on file in the office of administration and shall be the basis
60 for equipment approval requests;

61 (4) Review of all state EDP and ADP applications to assure conformance with the state
62 information systems plan, and the information systems plans of state agencies and service
63 centers;

64 (5) Establish procurement procedures for EDP and ADP hardware, software, and support
65 service;

66 (6) Establish a charging system to be used by all service centers when performing work
67 for any agency;

68 (7) Establish procedures for the receipt of service center charges and payments for
69 operation of the service centers. The commissioner shall maintain a complete inventory of all
70 state-owned or -leased EDP and ADP equipment, and annually submit a report to the general
71 assembly which shall include starting and ending EDP and ADP costs for the fiscal year
72 previously ended, and the reasons for major increases or variances between starting and ending

73 costs. The commissioner shall also adopt, after public hearing, rules and regulations designed
74 to protect the rights of privacy of the citizens of this state and the confidentiality of information
75 contained in computer tapes or other storage devices to the maximum extent possible consistent
76 with the efficient operation of the office of administration and contracting state agencies.

77 [10.] **9.** Except as provided in subsection [13] **11** of this section, the fee title to all real
78 property now owned or hereafter acquired by the state of Missouri, or any department, division,
79 commission, board or agency of state government, other than real property owned or possessed
80 by the state highways and transportation commission, conservation commission, state department
81 of natural resources, and the University of Missouri, shall [on May 2, 1974,] vest in the governor.
82 The governor may [not] convey or otherwise transfer the title to such real property[, unless such
83 conveyance or transfer is first authorized by an act of the general assembly]. The provisions of
84 this subsection [requiring authorization of a conveyance or transfer by an act of the general
85 assembly] **authorizing a conveyance by the governor** shall not, however, apply to the granting
86 or conveyance of an easement to any rural electric cooperative as defined in chapter 394, RSMo,
87 municipal corporation, quasi-governmental corporation owning or operating a public utility, or
88 a public utility, except railroads, as defined in chapter 386, RSMo. The governor, with the
89 approval of the board of public buildings, may, upon the request of any state department, agency,
90 board or commission not otherwise being empowered to make its own transfer or conveyance
91 of any land belonging to the state of Missouri which is under the control and custody of such
92 department, agency, board or commission, grant or convey [without further legislative action],
93 for such consideration as may be agreed upon, easements across, over, upon or under any such
94 state land to any rural electric cooperative, as defined in chapter 394, RSMo, municipal
95 corporation, or quasi-governmental corporation owning or operating a public utility, or a public
96 utility, except "railroad", as defined in chapter 386, RSMo. The easement shall be for the
97 purpose of promoting the general health, welfare and safety of the public and shall include the
98 right of ingress or egress for the purpose of constructing, maintaining or removing any pipeline,
99 power line, sewer or other similar public utility installation or any equipment or appurtenances
100 necessary to the operation thereof[, except that "railroad" as defined in chapter 386, RSMo, shall
101 not be included in the provisions of this subsection unless such conveyance or transfer is first
102 authorized by an act of the general assembly]. The easement shall be for such consideration as
103 may be agreed upon by the parties and approved by the board of public buildings. [The attorney
104 general shall approve the form of the instrument of conveyance.] The commissioner of
105 administration shall prepare management plans for such properties in the manner set out in
106 subsection [7] **6** of this section.

107 [11.] **10.** The commissioner of administration shall administer a revolving
108 "Administrative Trust Fund" which shall be established by the state treasurer which shall be

109 funded annually by appropriation and which shall contain moneys transferred or paid to the
110 office of administration in return for goods and services provided by the office of administration
111 to any governmental entity or to the public. The state treasurer shall be the custodian of the fund,
112 and shall approve disbursements from the fund for the purchase of goods or services at the
113 request of the commissioner of administration or the commissioner's designee. The provisions
114 of section 33.080, RSMo, notwithstanding, moneys in the fund shall not lapse, unless and then
115 only to the extent to which the unencumbered balance at the close of any fiscal year exceeds
116 one-twelfth of the total amount appropriated, paid, or transferred to the fund during such fiscal
117 year. The commissioner shall prepare an annual report of all receipts and expenditures from the
118 fund.

119 [12. All the powers, duties and functions of the department of community affairs relating
120 to statewide planning are transferred by type I transfer to the office of administration.

121 13.] **11.** The titles which are vested in the governor by or pursuant to this section to real
122 property assigned to any of the educational institutions referred to in section 174.020, RSMo, [on
123 June 15, 1983, are hereby transferred to and] **are** vested in the board of regents of the respective
124 educational institutions, and the titles to real property and other interests therein hereafter
125 acquired by or for the use of any such educational institution, notwithstanding provisions of this
126 section, shall vest in the board of regents of the educational institution. The board of regents
127 [may] **shall** not convey or otherwise transfer the title to or other interest in such real property
128 unless the conveyance or transfer is first authorized by an act of the general assembly, except as
129 provided in section 174.042, RSMo, and except that the board of regents may grant easements
130 over, in and under such real property without further legislative action.

131 [14.] **12.** All county sports complex authorities, and any sports complex authority located
132 in a city not within a county, in existence on August 13, 1986, and organized under the
133 provisions of sections 64.920 to 64.950, RSMo, are assigned to the office of administration, but
134 such authorities shall not be subject to the provisions of subdivision (4) of subsection 6 of
135 section 1 of the Omnibus State Reorganization Act of 1974, Appendix B, RSMo, as amended.

136 [15.] **13.** All powers, duties, and functions vested in the administrative hearing
137 commission, sections 621.015 to 621.205, RSMo, and others, are transferred to the office of
138 administration by a type III transfer.

107.170. 1. As used in this section, the following terms mean:

- 2 (1) "Contractor", a person or business entity who provides construction services under
3 contract to a public entity. Contractor specifically does not include professional engineers,
4 architects or land surveyors licensed pursuant to chapter 327, RSMo, those who provide
5 environmental assessment services or those who design, create or otherwise provide works of

6 art under a city's formally established program for the acquisition and installation of works of
7 art and other aesthetic adornments to public buildings and property;

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

10 (3) "Public works", the erection, construction, alteration, repair or improvement of any
11 building, road, street, public utility or other public facility owned by the public entity.

12 2. It is hereby made the duty of all public entities in this state, in making contracts for
13 public works, the cost of which is estimated to exceed [twenty-five] **one hundred** thousand
14 dollars, to be performed for the public entity, to require every contractor for such work to furnish
15 to the public entity, a bond with good and sufficient sureties, in an amount fixed by the public
16 entity, and such bond, among other conditions, shall be conditioned for the payment of any and
17 all materials, incorporated, consumed or used in connection with the construction of such work,
18 and all insurance premiums, both for compensation, and for all other kinds of insurance, said
19 work, and for all labor performed in such work whether by subcontractor or otherwise.

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

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

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

610.021. Except to the extent disclosure is otherwise required by law, a public
2 governmental body is authorized to close meetings, records and votes, to the extent they relate
3 to the following:

4 (1) Legal actions, causes of action or litigation involving a public governmental body
5 and any confidential or privileged communications between a public governmental body or its
6 representatives and its attorneys. However, any minutes, vote or settlement agreement relating
7 to legal actions, causes of action or litigation involving a public governmental body or any agent

8 or entity representing its interests or acting on its behalf or with its authority, including any
9 insurance company acting on behalf of a public government body as its insured, shall be made
10 public upon final disposition of the matter voted upon or upon the signing by the parties of the
11 settlement agreement, unless, prior to final disposition, the settlement agreement is ordered
12 closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the
13 action clearly outweighs the public policy considerations of section 610.011, however, the
14 amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed;
15 provided, however, in matters involving the exercise of the power of eminent domain, the vote
16 shall be announced or become public immediately following the action on the motion to
17 authorize institution of such a legal action. Legal work product shall be considered a closed
18 record;

19 (2) Leasing, purchase or sale of real estate by a public governmental body where public
20 knowledge of the transaction might adversely affect the legal consideration therefor. However,
21 any minutes, vote or public record approving a contract relating to the leasing, purchase or sale
22 of real estate by a public governmental body shall be made public upon execution of the lease,
23 purchase or sale of the real estate;

24 (3) Hiring, firing, disciplining or promoting of particular employees by a public
25 governmental body when personal information about the employee is discussed or recorded.
26 However, any vote on a final decision, when taken by a public governmental body, to hire, fire,
27 promote or discipline an employee of a public governmental body shall be made available with
28 a record of how each member voted to the public within seventy-two hours of the close of the
29 meeting where such action occurs; provided, however, that any employee so affected shall be
30 entitled to prompt notice of such decision during the seventy-two-hour period before such
31 decision is made available to the public. As used in this subdivision, the term "personal
32 information" means information relating to the performance or merit of individual employees;

33 (4) The state militia or national guard or any part thereof;

34 (5) Nonjudicial mental or physical health proceedings involving identifiable persons,
35 including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or
36 treatment;

37 (6) Scholastic probation, expulsion, or graduation of identifiable individuals, including
38 records of individual test or examination scores; however, personally identifiable student records
39 maintained by public educational institutions shall be open for inspection by the parents,
40 guardian or other custodian of students under the age of eighteen years and by the parents,
41 guardian or other custodian and the student if the student is over the age of eighteen years;

42 (7) Testing and examination materials, before the test or examination is given or, if it
43 is to be given again, before so given again;

- 44 (8) Welfare cases of identifiable individuals;
- 45 (9) Preparation, including any discussions or work product, on behalf of a public
46 governmental body or its representatives for negotiations with employee groups;
- 47 (10) Software codes for electronic data processing and documentation thereof;
- 48 (11) Specifications for competitive bidding, until either the specifications are officially
49 approved by the public governmental body or the specifications are published for bid;
- 50 (12) Sealed bids and related documents, until the bids are opened **and the intent to**
51 **award notice is mailed**; and sealed proposals and related documents or any documents related
52 to a negotiated contract until a contract is executed, or all proposals are rejected;
- 53 (13) Individually identifiable personnel records, performance ratings or records
54 pertaining to employees or applicants for employment, except that this exemption shall not apply
55 to the names, positions, salaries and lengths of service of officers and employees of public
56 agencies once they are employed as such, and the names of private sources donating or
57 contributing money to the salary of a chancellor or president at all public colleges and
58 universities in the state of Missouri and the amount of money contributed by the source;
- 59 (14) Records which are protected from disclosure by law;
- 60 (15) Meetings and public records relating to scientific and technological innovations in
61 which the owner has a proprietary interest;
- 62 (16) Records relating to municipal hotlines established for the reporting of abuse and
63 wrongdoing;
- 64 (17) Confidential or privileged communications between a public governmental body
65 and its auditor, including all auditor work product; however, all final audit reports issued by the
66 auditor are to be considered open records pursuant to this chapter;
- 67 (18) Operational guidelines and policies developed, adopted, or maintained by any public
68 agency responsible for law enforcement, public safety, first response, or public health for use in
69 responding to or preventing any critical incident which is or appears to be terrorist in nature and
70 which has the potential to endanger individual or public safety or health. Nothing in this
71 exception shall be deemed to close information regarding expenditures, purchases, or contracts
72 made by an agency in implementing these guidelines or policies. When seeking to close
73 information pursuant to this exception, the agency shall affirmatively state in writing that
74 disclosure would impair its ability to protect the safety or health of persons, and shall in the same
75 writing state that the public interest in nondisclosure outweighs the public interest in disclosure
76 of the records. This exception shall sunset on December 31, 2008;
- 77 (19) Existing or proposed security systems and structural plans of real property owned
78 or leased by a public governmental body, and information that is voluntarily submitted by a
79 nonpublic entity owning or operating an infrastructure to any public governmental body for use

80 by that body to devise plans for protection of that infrastructure, the public disclosure of which
81 would threaten public safety:

82 (a) Records related to the procurement of or expenditures relating to security systems
83 purchased with public funds shall be open;

84 (b) When seeking to close information pursuant to this exception, the public
85 governmental body shall affirmatively state in writing that disclosure would impair the public
86 governmental body's ability to protect the security or safety of persons or real property, and shall
87 in the same writing state that the public interest in nondisclosure outweighs the public interest
88 in disclosure of the records;

89 (c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the
90 receiving agency within ninety days of submission to determine if retention of the document is
91 necessary in furtherance of a state security interest. If retention is not necessary, the documents
92 shall be returned to the nonpublic governmental body or destroyed;

93 (d) This exception shall sunset on December 31, 2008;

94 (20) Records that identify the configuration of components or the operation of a
95 computer, computer system, computer network, or telecommunications network, and would
96 allow unauthorized access to or unlawful disruption of a computer, computer system, computer
97 network, or telecommunications network of a public governmental body. This exception shall
98 not be used to limit or deny access to otherwise public records in a file, document, data file or
99 database containing public records. Records related to the procurement of or expenditures
100 relating to such computer, computer system, computer network, or telecommunications network,
101 including the amount of moneys paid by, or on behalf of, a public governmental body for such
102 computer, computer system, computer network, or telecommunications network shall be open;
103 and

104 (21) Credit card numbers, personal identification numbers, digital certificates, physical
105 and virtual keys, access codes or authorization codes that are used to protect the security of
106 electronic transactions between a public governmental body and a person or entity doing business
107 with a public governmental body. Nothing in this section shall be deemed to close the record
108 of a person or entity using a credit card held in the name of a public governmental body or any
109 record of a transaction made by a person using a credit card or other method of payment for
110 which reimbursement is made by a public governmental body.

2 [8.120. There is hereby created within the office of administration a
3 "Division of Design and Construction", which shall supervise the design,
4 construction, renovations and repair of state facilities, except as provided in
5 sections 8.015 and 8.017, and except in those belonging to the institutions of
higher education and the department of conservation. The division of design and

6 construction shall be responsible to review all requests for appropriations for
7 capital improvements.]
8

2 [8.803. The board of public buildings, in accordance with section 8.400,
3 or the state environmental improvement and energy resources authority, in
4 accordance with sections 260.005 to 260.125, RSMo, may authorize the sale of
5 bonds or participate in other appropriate financing arrangements to fund energy
6 efficiency projects in state buildings. All energy efficiency projects for state
7 buildings proposed for funding by the environmental improvement and energy
8 resources authority pursuant to sections 8.800 to 8.825 and the anticipated
9 amount of the bond issues or other financing arrangement to fund such projects
10 shall be specifically approved by the joint committee on capital improvements
11 oversight within forty-five days of notification to the committee. If the
12 committee does not meet within forty-five days, the projects shall stand
13 approved.]

2 [8.815. The department and the division shall establish a voluntary
3 working group of persons and interest groups with expertise in energy efficiency,
4 including, but not limited to, such persons as electrical engineers, mechanical
5 engineers, builders, architects, landscape architects, nonprofit organizations, and
6 persons with expertise in solar and renewable energy forms. The voluntary
7 working group shall advise the department on the development of the energy
8 efficiency standard and shall assist the department in implementation of the
9 standard by recommending, reviewing and coordinating education programs for
10 designers, builders, businesses and other interested persons to facilitate
11 incorporation of the standard into existing practices.]

2 [8.817. The department shall analyze all state buildings for energy
3 efficiency as funds become available, using criteria promulgated by the
4 department by rule incorporating state-of-the-art technology. The results of the
5 analyses shall be submitted by May fifteenth each year to the commissioner of
6 administration, the governor and the general assembly until all state building
7 analyses are completed. The results of the analysis of each state building shall
8 be submitted to the state agency which owns or operates that state building as
9 well.]

2 [8.823. The division shall recommend funding of energy efficiency
3 projects in state buildings. The division shall use energy efficiency analyses
4 provided by the department and review criteria established by the division with
5 the purpose of achieving the maximum reduction in energy usage consistent with
6 the constraints of prudent cost justification.]

[8.830. For purposes of sections 8.830 to 8.851, the following terms mean:

- (1) "Department", the department of natural resources;
- (2) "Director", the director of the department of natural resources;
- (3) "Division", the division of design and construction;
- (4) "Public building", a building owned or operated by a governmental subdivision of the state, including, but not limited to, a city, county or school district;
- (5) "State building", a building owned or operated by the state, a state agency or department, a state college or a state university.]

[8.835. 1. The office of administration shall initiate the highest priority project or projects on or before August 28, 1994, and shall initiate projects with a simple energy savings payback period of five years or less on or before August 28, 1998.

2. The office of administration shall advise the senate appropriations committee and the house budget committee of the anticipated reduction of utility and energy costs of all affected state agencies for the payback period of each project and for two fiscal years after completion of the payback period.]

[8.837. 1. By July 1, 1994, the department shall establish, by rule, a minimum energy efficiency standard for new and substantially renovated state buildings which shall be at least as stringent as the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.01-1989, as revised, and shall be at least as stringent as any statewide energy efficiency standard required pursuant to the Energy Policy Act of 1992 (Public Law 102-486).

2. All new or substantially renovated state buildings for which design of such construction or renovation is initiated on or after July 1, 1994, shall meet applicable provisions of the minimum energy efficiency standard.]

[8.840. 1. The department shall establish, by rule, a state building energy efficiency rating system by July 1, 1994.

2. Each building considered for acquisition or lease by the state shall be rated by the department pursuant to the energy efficiency rating system provided in subsection 1 of this section. The division or state agency that proposes to operate the building shall consider and compare the energy efficiency rating and economic efficiency of each building under consideration before contracting for acquisition or lease.]

[8.843. There is hereby established an interagency advisory committee on energy cost reduction and savings. The committee shall consist of the commissioner of administration, the director of the division of design and

4 construction, the director of the department of natural resources, the director of
5 the environmental improvement and energy resources authority, the director of
6 the division of energy, the director of the department of transportation, the
7 director of the department of conservation and the commissioner of higher
8 education. The committee shall advise the department on the development of the
9 minimum energy efficiency standard and state building energy efficiency rating
10 system and shall assist the office of administration in implementing sections
11 8.833 and 8.835.]
12

2 [8.845. The division, in conjunction with the department, shall compile
3 data on energy consumption and energy costs for all state buildings to establish
4 by July 1, 1994, a baseline for energy consumption and expenditures in state
5 buildings using existing data to the maximum extent possible. The office of
6 administration shall use these data when selecting and prioritizing projects
7 pursuant to sections 8.833 and 8.835. The office of administration shall use
8 energy efficiency analyses provided by the department and review criteria
9 established by the division to develop its recommendations.]

2 [8.847. The department shall make available energy efficiency practices
3 information to be used by individuals involved in the design, construction,
4 retrofitting and maintenance of public and state buildings. The division shall
5 immediately adopt and implement those energy efficiency practices for the
6 purchase and replacement of electrical and mechanical equipment where the
7 simple energy savings payback period is five years or less.]

2 [8.849. The department shall authorize the use of available federal
3 petroleum violation escrow funds for the administration of sections 8.830 to
4 8.851. Such funds may be used by the department, or by the office of
administration if authorized by the department.]

✓