

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 596
94TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, April 19, 2007, with recommendation that the Senate Committee Substitute do pass.

1766S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 227.107, 390.071, 390.136, and 622.095, RSMo, and to enact in lieu thereof five new sections relating to transportation, with penalty provisions.

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

Section A. Sections 227.107, 390.071, 390.136, and 622.095, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 227.103, 227.107, 227.115, 390.021, and 390.136, to read as follows:

**227.103. 1. Notwithstanding any other provision of law to the
2 contrary, the commission is authorized to accept an annual bid bond
3 for its construction and maintenance projects. The commission shall
4 prescribe the form and content of an annual bid bond under the
5 provisions set forth in the Missouri standard specifications for highway
6 construction, or its successor.**

**7 2. The commission is authorized to promulgate administrative
8 rules to administer the provisions of this section. Any rule or portion
9 of a rule, as that term is defined in section 536.010, RSMo, that is
10 created under the authority delegated in this section shall become
11 effective only if it complies with and is subject to all of the provisions
12 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
13 section and chapter 536, RSMo, are nonseverable and if any of the
14 powers vested with the general assembly pursuant to chapter 536,
15 RSMo, to review, to delay the effective date, or to disapprove and annul
16 a rule are subsequently held unconstitutional, then the grant of
17 rulemaking authority and any rule proposed or adopted after August**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 **28, 2007, shall be invalid and void.**

227.107. 1. Notwithstanding any provision of section 227.100 to the
2 contrary, as an alternative to the requirements and procedures specified by
3 sections 227.040 to [227.100] **227.105**, the state highways and transportation
4 commission is authorized to enter into highway design-build project
5 contracts. The authority granted to the state highways and transportation
6 commission by this section shall be limited to a total of three design- build project
7 contracts. Two design-build projects authorized by this section shall be selected
8 by the highways and transportation commission from 1992 fifteen year plan
9 projects. Authority to enter into design-build projects granted by this section
10 shall expire on July 1, 2012, unless extended by statute or upon completion of
11 three projects, whichever is first.

12 2. For the purpose of this section a "design-builder" is defined as an
13 individual, corporation, partnership, joint venture or other entity, including
14 combinations of such entities making a proposal to perform or performing a
15 design-build highway project contract.

16 3. For the purpose of this section, "design-build highway project contract"
17 is defined as the procurement of all materials and services necessary for the
18 design, construction, reconstruction or improvement of a state highway project in
19 a single contract with a design-builder capable of providing the necessary
20 materials and services.

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

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

28 6. In any design-build highway project contract, whether involving state
29 or federal funds, the commission shall require that each person submitting a
30 request for qualifications provide a detailed disadvantaged business enterprise
31 participation plan. The plan shall provide information describing the experience
32 of the person in meeting disadvantaged business enterprise participation goals,
33 how the person will meet the department of transportation's disadvantaged
34 business enterprise participation goal and such other qualifications that the
35 commission considers to be in the best interest of the state.

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

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

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

44 10. **The requirements of subsection 9 of this section may be**
45 **modified by the commission for any design-build highway project**
46 **contract which is designated by the commission as a "design-build-**
47 **finance-maintain" project, and for which the contract with the design-**
48 **builder exceeds twenty-five years. For such projects, the commission**
49 **shall require the design-builder to provide or cause to be provided such**
50 **bonds in such terms, durations, and amounts as it may determine to be**
51 **adequate for its protection and provided by a surety or sureties**
52 **satisfactory to the commission, including but not limited to:**

53 (1) **A bid or proposal bond in an amount of not less than five**
54 **million dollars;**

55 (2) **A performance bond or bonds for the construction period**
56 **specified in the design-build highway project contract in an amount of**
57 **not less than the maximum cost of construction work performed or**
58 **caused to be performed by the design-builder in any calendar year of**
59 **such period; and**

60 (3) **A payment bond or bonds that shall be enforceable under**
61 **section 522.300, RSMo, for the protection of all persons supplying labor**
62 **and material in carrying out the work provided for in the design-build**
63 **highway project contract. The amount of the payment bond or bonds**
64 **shall equal the total amount payable under the terms of the design-**
65 **build highway project contract unless the commission determines in**
66 **writing supported by specific findings that a payment bond or bonds in**
67 **such amount is impractical, in which case the commission shall**
68 **establish the amount of the payment bond or bonds; except that, the**
69 **amount of the payment bond or bonds shall not be less than the amount**
70 **of the performance bond or bonds.**

71 11. The commission is authorized to prescribe the form of the contracts
72 for the work.

73 [11.] **12.** The commission is empowered to make all final decisions
74 concerning the performance of the work under the design-build highway project
75 contract, including claims for additional time and compensation.

76 [12.] **13.** The provisions of sections 8.285 to 8.291, RSMo, shall not apply
77 to the procurement of architectural, engineering or land surveying services for the
78 design-build highway project, except that any person providing architectural,
79 engineering or land surveying services for the design-builder on the design-build
80 highway project must be licensed in Missouri to provide such services.

81 [13.] **14.** The commission shall pay a reasonable stipend to prequalified
82 responsive design-builders who submit a proposal, but are not awarded the
83 design-build highway project.

84 [14.] **15.** The commission shall comply with the provisions of any act of
85 congress or any regulations of any federal administrative agency which provides
86 and authorizes the use of federal funds for highway projects using the
87 design-build process.

88 [15.] **16.** The commission shall promulgate administrative rules to
89 implement this section or to secure federal funds. Such rules shall be published
90 for comment in the Missouri Register and shall include prequalification criteria,
91 the make-up of the prequalification review team, specifications for the design
92 criteria package, the method of advertising, receiving and evaluating proposals
93 from design-builders, the criteria for awarding the design-build highway project
94 based on the design criteria package and a separate proposal stating the cost of
95 construction, and other methods, procedures and criteria necessary to administer
96 this section.

97 [16.] **17.** The commission shall make a status report to the members of
98 the general assembly and the governor following the award of the design-build
99 project, as an individual component of the annual report submitted by the
100 commission to the joint transportation oversight committee in accordance with the
101 provisions of section 21.795, RSMo. The annual report prior to advertisement of
102 the design-build highway project contracts shall state the goals of the project in
103 reducing costs and/or the time of completion for the project in comparison to the
104 design-bid-build method of construction and objective measurements to be utilized
105 in determining achievement of such goals. Subsequent annual reports shall
106 include: the time estimated for design and construction of different phases or
107 segments of the project and the actual time required to complete such work
108 during the period; the amount of each progress payment to the design-builder

109 during the period and the percentage and a description of the portion of the
110 project completed regarding such payment; the number and a description of
111 design change orders issued during the period and the cost of each such change
112 order; upon substantial and final completion, the total cost of the design-build
113 highway project with a breakdown of costs for design and construction; and such
114 other measurements as specified by rule. The annual report immediately after
115 final completion of the project shall state an assessment of the advantages and
116 disadvantages of the design-build method of contracting for highway and bridge
117 projects in comparison to the design-bid-build method of contracting and an
118 assessment of whether the goals of the project in reducing costs and/or the time
119 of completion of the project were met.

120 [17.] 18. The commission shall give public notice of a request for
121 qualifications in at least two public newspapers that are distributed wholly or in
122 part in this state and at least one construction industry trade publication that is
123 distributed nationally.

124 [18.] 19. The commission shall publish its cost estimates of the
125 design-build highway project award and the project completion date along with
126 its public notice of a request for qualifications of the design-build project.

127 [19.] 20. If the commission fails to receive **statements of**
128 **qualifications from at least two design-builders in response to a request**
129 **for qualifications under subsection 5 of this section or to receive** at least
130 two responsive submissions from design-builders considered qualified[,
131 submissions shall not be opened and it shall] **for a design-build highway**
132 **project contract, the design-build procurement process shall be**
133 **suspended and the commission may** readvertise the project.

134 21. (1) In the event the commission issues a request for
135 **qualifications under subsection 5 of this section at least twice for the**
136 **same highway project, and it receives a statement of qualifications**
137 **from only one design-builder for the design-build highway project**
138 **contract, the commission may negotiate in good faith with the design-**
139 **builder for such contract based upon the best value to the state.**

140 (2) In the event the commission issues a request for proposals
141 **under subsection 7 of this section at least twice for the same highway**
142 **project, and it receives only one responsive submission for the design-**
143 **build highway project contract, the commission may negotiate in good**
144 **faith with the design-builder for such contract based upon the best**

145 value to the state.

146 (3) At any time prior to the execution of a design-build highway
147 project contract with the design-builder, if the commission is not
148 satisfied with the results of the negotiation with the design-builder, it
149 may terminate the negotiations and reject any and all submissions and
150 proposals by the design-builder.

 227.115. With respect to contracts awarded by the department of
2 transportation or the state highways and transportation commission
3 under sections 227.100, 227.107, or 238.260, RSMo, after June 30, 2007,
4 the department or commission shall be authorized to issue an
5 exemption certificate for the purchase of tangible personal property
6 and materials as exempt from sales and use tax as provided for exempt
7 entities in section 144.062, RSMo. The department or commission and
8 any contractor or material supplier operating under such exemption
9 certificate shall comply with section 144.062, RSMo, and any rules
10 promulgated by the department of revenue with respect to such sales.

 390.021. 1. The provisions of this section shall supercede any
2 provisions of section 390.030 to the contrary.

3 2. As used in this section and as used in chapter 622, RSMo, the
4 following words and phrases mean:

5 (1) "UCR implementing regulations" includes the regulations
6 issued by the United States secretary of transportation under 49
7 U.S.C.A., section 13908; the rules and regulations issued by the board
8 of directors of the Unified Carrier Registration (UCR) plan under 49
9 U.S.C.A., section 14504a; and the administrative rules adopted by the
10 state highways and transportation commission under this section;

11 (2) "Unified Carrier Registration Act", or "UCR Act", means
12 sections 4301 to 4308 of the Unified Carrier Registration Act of 2005,
13 within subtitle C of title IV of the "Safe, Accountable, Flexible, Efficient
14 Transportation Equity Act: A Legacy for Users" or "SAFETEA-LU",
15 Public Law 109-59 (119 Stat. 1761), as those sections have been and
16 periodically may be amended.

17 3. Except when the context clearly requires otherwise, the
18 definitions of terms in 49 U.S.C., sections 13102, 13908, and 14504a shall
19 apply to and determine the meaning of those terms as used in this
20 section.

21 4. Notwithstanding any other provision of law, in carrying out

22 and being subject to the provisions of the UCR act, the Unified Carrier
23 Registration (UCR) agreement, the UCR implementing regulations, and
24 this section, the state highways and transportation commission may:

25 (1) Submit to the proper federal authorities, amend and carry
26 out a state plan to qualify as a base-state and to participate in the UCR
27 plan and administer the UCR agreement, and take other necessary
28 actions as the designated representative of the state of Missouri so that:

29 (a) Missouri domiciled entities who must register and pay UCR
30 registration fees are not required to register and pay those fees in a
31 base-state other than the state of Missouri;

32 (b) The state of Missouri does not forfeit UCR registration fee
33 revenues; and

34 (c) The state of Missouri may maintain its eligibility to receive
35 the maximum allowable allocations of revenues derived under the UCR
36 agreement;

37 (2) Administer the UCR registration of Missouri-domiciled motor
38 carriers, motor private carriers, brokers, freight forwarders, and
39 leasing companies, and such persons domiciled in nonparticipating
40 states who have designated this state as their base-state under the UCR
41 act;

42 (3) Receive, collect, process, deposit, transfer, distribute, and
43 refund UCR registration fees relating to any of the persons and
44 activities described in this section. Notwithstanding any law, these
45 UCR registration fees collected by the commission are hereby
46 designated as nonstate funds within the meaning of article IV, section
47 15 of the Missouri Constitution, and the commission shall transmit
48 these funds to the state department of revenue for deposit to the credit
49 of the state highways and transportation department fund. The
50 commission shall, from time to time, direct the payment of, and the
51 director of revenue shall pay, the fees so deposited, in accordance with
52 the provisions of the UCR act, the UCR agreement, and the UCR
53 implementing regulations. The director of revenue shall credit all
54 income derived from the investment of these funds to the state
55 highways and transportation department fund;

56 (4) Exercise all other powers, duties, and functions the UCR act
57 requires of or allows a participating state or base-state;

58 (5) Promulgate administrative rules, and issue specific orders,

59 relating to any of the persons and activities described in this
60 section. Any rule or portion of a rule, as that term is defined in section
61 536.010, RSMo, that is created under the authority delegated in this
62 section shall become effective only if it complies with and is subject to
63 all of the provisions of chapter 536, RSMo, and, if applicable, section
64 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
65 and if any of the powers vested with the general assembly pursuant to
66 chapter 536, RSMo, to review, to delay the effective date, or to
67 disapprove and annul a rule are subsequently held unconstitutional,
68 then the grant of rulemaking authority and any rule proposed or
69 adopted after August 28, 2007, shall be invalid and void;

70 (6) Enter into agreements with any agencies or officers of the
71 United States, or of any state that participates or intends to enter into
72 the UCR agreement; and

73 (7) Delegate any or all of the powers, duties, and functions of the
74 commission under this section to any agent or contractor.

75 5. After the commission has entered into the UCR plan on behalf
76 of this state, the requirements in the UCR agreement shall take
77 precedence over any conflicting requirements under chapter 622,
78 RSMo, or this chapter.

79 6. Notwithstanding any other provision of law, every motor
80 carrier, motor private carrier, broker, freight forwarder, and leasing
81 company that has its principal place of business within this state, and
82 every such person who has designated this state as the person's base-
83 state under the provisions of the UCR act, shall timely complete and
84 file with the state highways and transportation commission all the
85 forms required by the UCR agreement and the UCR implementing
86 regulations, and shall pay the required UCR registration fees to the
87 commission.

88 7. All powers of the commission under section 226.008, RSMo, are
89 hereby made applicable to the enforcement of this section with
90 reference to any person subject to any provision of this section. The
91 chief counsel shall not be required to exhaust any administrative
92 remedies before commencing any enforcement actions under this
93 section. The provisions of chapter 622, RSMo, shall apply to and govern
94 the practice and procedures before the courts in those actions.

95 8. Except as required by the UCR act, the UCR agreement, or the

96 **UCR implementing regulations, the provisions of this section and the**
97 **rules adopted by the commission under this section shall not be**
98 **construed as exempting any motor carrier, or any person controlled by**
99 **a motor carrier, from any of the requirements of chapter 622, RSMo, or**
100 **this chapter, relating to the transportation of passengers or property**
101 **in intrastate commerce.**

390.136. 1. No motor carrier, except as provided in section 390.030, shall
2 operate any motor vehicle unless such vehicle shall be accompanied by an annual
3 or seventy-two-hour regulatory license issued by the state highways and
4 transportation commission; provided that when a motor carrier uses a
5 truck-tractor for pulling trailers or semitrailers, such motor carrier may elect to
6 license either the truck-tractor, trailer or semitrailer. The fee for each such
7 regulatory license shall be ten dollars per year and shall be due and payable as
8 provided in this section. Such license shall be issued in such form and shall be
9 used pursuant to such reasonable rules and regulations as may be prescribed by
10 the commission.

11 2. Any regulatory license issued to a motor carrier for use in driveaway
12 operations, as defined in this section, shall be issued to such motor carrier
13 without reference to any particular vehicle and may be used interchangeably by
14 the holder thereof on any motor vehicle or combinations thereof moving in
15 driveaway operations under such carrier's property carrier registration,
16 certificate, or permit.

17 3. In case of emergency, temporary, unusual or a peak demand for
18 transportation, additional vehicles as described in subsection 1 of this section
19 may be operated upon issuance of a seventy-two-hour license for each vehicle so
20 operated. The license fee for each such additional vehicle shall be the sum of five
21 dollars for each seventy-two consecutive hours, or any portion thereof. Such
22 licenses shall be issued, renewed, and staggered in such form and shall be used
23 pursuant to such reasonable rules and regulations as the commission may
24 prescribe. No such additional vehicle which has been licensed pursuant to this
25 subsection shall be operated without being accompanied by such license.

26 4. The commission shall collect the applicable license fee prior to the
27 issuance of such license or licenses provided for in this section, and shall receive
28 the license fee or fees and immediately deposit the same to the credit of the state
29 highways and transportation department fund [except as otherwise provided in
30 section 622.095, RSMo,] or when an agreement has been negotiated with another

31 jurisdiction whereby prepayment is not required. In such cases, [section 622.095,
32 RSMo, if applicable, or] the terms of the agreement shall prevail.

33 5. Any person operating as a motor carrier who violates or fails to comply
34 with any of the provisions of this section shall be adjudged guilty of a
35 misdemeanor and, upon conviction thereof, shall be punished by a fine of not
36 more than one hundred dollars.

37 6. The regulatory license fee provided in this section may be paid at any
38 state weigh station.

39 7. The commission shall prescribe, for every regulatory license issued
40 pursuant to this section, an effective date and an expiration
41 date. Notwithstanding any provision of law to the contrary, the commission may
42 stagger the issuance of licenses pursuant to this section to begin at quarterly
43 intervals during any calendar year. Not later than the expiration date of the
44 current license, or as otherwise prescribed, each motor carrier shall pay the
45 regulatory license fee for each vehicle that the carrier will operate during the
46 next yearly period. The commission may issue partial or over one-year licenses
47 during the transition from an annual license, to accommodate motor carriers in
48 adding vehicles to their operations during the year, to coordinate the dates for a
49 single carrier's licensing of multiple licenses, or for such other reasons as
50 approved by the commission.

[390.071. 1. No person shall engage in the business of a
2 motor carrier in interstate commerce on any public highway in this
3 state unless there is in force with respect to such carrier a permit
4 issued by the division of motor carrier and railroad safety
5 authorizing such operations.

6 2. Upon application to the division in writing, containing
7 such information as the division may by rule require, accompanied
8 by a copy of applicant's certificate of public convenience and
9 necessity or permit issued by the Interstate Commerce
10 Commission, the filing of such liability insurance policy or bond
11 and other formal documents as the division shall by rule require,
12 the division, if it finds applicant qualified, shall, with or without
13 hearing, issue a permit authorizing the proposed interstate
14 operations.]

[622.095. 1. In addition to its other powers, the state
2 highways and transportation commission may negotiate and enter

3 into fair and equitable cooperative agreements or contracts with
4 other states, the District of Columbia, territories and possessions
5 of the United States, foreign countries, and any of their officials,
6 agents or instrumentalities, to promote cooperative action and
7 mutual assistance between the participating jurisdictions with
8 regard to the uniform administration and registration, through a
9 single base jurisdiction for each registrant, of Federal Motor
10 Carrier Safety Administration operating authority and exempt
11 operations by motor vehicles operated in interstate
12 commerce. Notwithstanding any other provision of law to the
13 contrary, and in accordance with the provisions of such agreements
14 or contracts between participating jurisdictions, the commission
15 may:

16 (1) Delegate to other participating jurisdictions the
17 authority and responsibility to collect and pay over statutory
18 registration, administration or license fees; to receive, approve and
19 maintain the required proof of public liability insurance coverage;
20 to receive, process, maintain and transmit registration information
21 and documentation; to issue evidence of proper registration in lieu
22 of certificates, licenses, or permits which the commission may issue
23 motor vehicle licenses or identifiers in lieu of regulatory licenses
24 under section 390.136, RSMo; and to suspend or revoke any
25 credential, approval, registration, certificate, permit, license, or
26 identifier referred to in this section, as agents on behalf of the
27 commission with regard to motor vehicle operations by persons
28 having a base jurisdiction other than this state;

29 (2) Assume the authority and responsibility on behalf of
30 other jurisdictions participating in such agreements or contracts to
31 collect and direct the department of revenue to pay over to the
32 appropriate jurisdictions statutory registration, administration or
33 license fees, and to perform all other activities described in
34 subdivision (1) of this subsection, on its own behalf or as an agent
35 on behalf of other participating jurisdictions, with regard to motor
36 vehicle operations in interstate commerce by persons having this
37 state as their base jurisdiction;

38 (3) Establish or modify dates for the payment of fees and

39 the issuance of annual motor vehicle licenses or identifiers in
40 conformity with such agreements or contracts, notwithstanding any
41 provisions of section 390.136, RSMo, to the contrary; and

42 (4) Modify, cancel or terminate any of the agreements or
43 contracts.

44 2. Notwithstanding the provisions of section 390.136, RSMo,
45 statutory registration, administration or license fees collected by
46 the commission on behalf of other jurisdictions under such
47 agreements or contracts are hereby designated as "nonstate funds"
48 within the meaning of section 15, article IV, Constitution of
49 Missouri, and shall be immediately transmitted to the department
50 of revenue of the state for deposit to the credit of a special fund
51 which is hereby created and designated as the "Base State
52 Registration Fund". The commission shall direct the payment of,
53 and the director of revenue shall pay, the fees so collected to the
54 appropriate other jurisdictions. All income derived from the
55 investment of the base state registration fund by the director of
56 revenue shall be credited to the state highways and transportation
57 department fund.

58 3. "Base jurisdiction", as used in this section, means the
59 jurisdiction participating in such agreements or contracts where
60 the registrant has its principal place of business.

61 4. Every person who has properly registered his or her
62 interstate operating authority or exempt operations with his or her
63 base jurisdiction and maintains such registration in force in
64 accordance with such agreements or contracts is authorized to
65 operate in interstate commerce within this state any motor vehicle
66 which is accompanied by a valid annual license or identifier issued
67 by his base jurisdiction in accordance with such agreements or
68 contracts, notwithstanding any provision of section 390.071,
69 390.126 or 390.136, RSMo, or rules of the commission to the
70 contrary.

71 5. Notwithstanding any provision of law to the contrary, the
72 commission may stagger and prorate the payment and collection of
73 license fees pursuant to this section for the purposes of:

74 (1) Coordinating the issuance of regulatory licenses under

75 this section with the issuance of other motor carrier credentials;
76 and
77 (2) Complying with any federal law or regulation.]

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