

SECOND REGULAR SESSION

# HOUSE BILL NO. 1974

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHLOTTACH (Sponsor),  
ST. ONGE AND LOEHNER (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 144.054, 227.600, 227.615, and 227.645, RSMo, and to enact in lieu thereof five new sections relating to the Missouri public-private partnerships transportation act.

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

Section A. Sections 144.054, 227.600, 227.615, and 227.645, RSMo, are repealed and  
2 five new sections enacted in lieu thereof, to be known as sections 135.660, 144.054, 227.600,  
3 227.615, and 227.645, to read as follows:

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

2 (1) "Project", any new project as defined in section 227.600, RSMo, that is  
3 commenced on or after January 1, 2009. "Project" shall not be construed to mean any  
4 maintenance or improvement to any infrastructure in existence or under construction  
5 before January 1, 2009;

6 (2) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo,  
7 excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or otherwise due  
8 under chapter 147 or 153, RSMo;

9 (3) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143,  
10 RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the  
11 tax imposed in chapter 147, 148, or 153, RSMo.

12 2. For all taxable years beginning on or after January 1, 2009, a taxpayer shall be  
13 allowed a tax credit for revenues received from a project completed under sections 227.600

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

14 to 227.669, RSMo. The tax credit amount shall be equal to the amount of such revenues  
15 received in the taxable year for which the tax credit is claimed. The amount of the tax  
16 credit issued shall not exceed the amount of the taxpayer's state tax liability for the tax  
17 year for which the credit is claimed. No amount of credit that the taxpayer is prohibited  
18 by this section from claiming in a tax year shall be refundable, nor shall any tax credit  
19 granted under this section be transferred, sold, or assigned.

20 3. The tax credit authorized in this section shall be claimed at the time the taxpayer  
21 files a Missouri income tax return, and shall include any documentation and information  
22 required by the department.

23 4. No later than one hundred twenty days after August 28, 2008, the department  
24 of revenue shall promulgate rules to implement the provisions of this section. Any rule or  
25 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under  
26 the authority delegated in this section shall become effective only if it complies with and  
27 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
28 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
29 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
30 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,  
31 then the grant of rulemaking authority and any rule proposed or adopted after August 28,  
32 2008, shall be invalid and void.

33 5. Under section 23.253, RSMo, of the Missouri Sunset Act:

34 (1) The provisions of the new program authorized under this section shall  
35 automatically sunset on December thirty-first six years after the effective date of this  
36 section unless reauthorized by an act of the general assembly; and

37 (2) If such program is reauthorized, the program authorized under this section  
38 shall automatically sunset on December thirty-first twelve years after the effective date of  
39 the reauthorization of this section; and

40 (3) This section shall terminate on September first of the calendar year immediately  
41 following the calendar year in which the program authorized under this section is sunset.

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

2 (1) "Processing", any mode of treatment, act, or series of acts performed upon materials  
3 to transform or reduce them to a different state or thing, including treatment necessary to  
4 maintain or preserve such processing by the producer at the production facility;

5 (2) "Recovered materials", those materials which have been diverted or removed from  
6 the solid waste stream for sale, use, reuse, or recycling, whether or not they require subsequent  
7 separation and processing.

8           2. In addition to all other exemptions granted under this chapter, there is hereby  
9 specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to  
10 144.761, and from the computation of the tax levied, assessed, or payable under sections 144.010  
11 to 144.525 and 144.600 to 144.761, electrical energy and gas, whether natural, artificial, or  
12 propane, water, coal, and energy sources, chemicals, machinery, equipment, and materials used  
13 or consumed in the manufacturing, processing, compounding, mining, or producing of any  
14 product, or used or consumed in the processing of recovered materials, or used in research and  
15 development related to manufacturing, processing, compounding, mining, or producing any  
16 product. The exemptions granted in this subsection shall not apply to local sales taxes as defined  
17 in section 32.085, RSMo, and the provisions of this subsection shall be in addition to any state  
18 and local sales tax exemption provided in section 144.030.

19           3. In addition to all other exemptions granted under this chapter, there is hereby  
20 specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to  
21 144.761, and section 238.235, RSMo, and the local sales tax law as defined in section 32.085,  
22 RSMo, and from the computation of the tax levied, assessed, or payable under sections 144.010  
23 to 144.525 and 144.600 to 144.761, and section 238.235, RSMo, and the local sales tax law as  
24 defined in section 32.085, RSMo, all utilities, machinery, and equipment used or consumed  
25 directly in television or radio broadcasting and all sales and purchases of tangible personal  
26 property, utilities, services, or any other transaction that would otherwise be subject to the state  
27 or local sales or use tax when such sales are made to or purchases are made by a contractor for  
28 use in fulfillment of any obligation under a defense contract with the United States government,  
29 and all sales and leases of tangible personal property by any county, city, incorporated town, or  
30 village, provided such sale or lease is authorized under chapter 100, RSMo, and such transaction  
31 is certified for sales tax exemption by the department of economic development, and tangible  
32 personal property used for railroad infrastructure brought into this state for processing,  
33 fabrication, or other modification for use outside the state in the regular course of business.

34           **4. In addition to all other exemptions granted under this chapter, there is hereby**  
35 **specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to**  
36 **144.746, and section 238.235, RSMo, and the local sales tax law as defined in section 32.085,**  
37 **RSMo, and from the computation of the tax levied, assessed, or payable under sections**  
38 **144.010 to 144.525 and 144.600 to 144.746, and section 238.235, RSMo, and the local sales**  
39 **tax law as defined in section 32.085, RSMo, all sales and purchases of tangible personal**  
40 **property, utilities, services, or any other transaction that would otherwise be subject to the**  
41 **state or local sales or use tax when such sales are made to or purchases are made by a**  
42 **contractor for use in completing a project under sections 227.600 to 227.669, RSMo.**

227.600. 1. Sections 227.600 to 227.669 shall be known and may be cited as the "Missouri Public-Private Partnerships Transportation Act".

2. As used in sections 227.600 to 227.669, unless the context clearly requires otherwise, the following terms mean:

(1) "Commission", the Missouri highways and transportation commission;

(2) "Comprehensive agreement", the final binding written comprehensive project agreement between a private partner and the commission required in section 227.621 to finance, develop, and/or operate the project;

(3) "Department", the Missouri department of transportation;

(4) "Develop" or "development", to plan, locate, relocate, establish, acquire, lease, design, or construct;

(5) "Finance", to fund the costs, expenses, liabilities, fees, profits, and all other charges incurred to finance, develop, and/or operate the project;

(6) "Interim agreement", a preliminary binding written agreement between a private partner and the commission that provides for completion of studies and any other activities to advance the financing, development, and/or operation of the project required by section 227.618;

(7) "Material default", any uncured default by a private partner in the performance of its duties that jeopardizes adequate service to the public from the project as determined by the commission;

(8) "Operate" or "operation", to improve, maintain, equip, modify, repair, administer, or collect user fees;

(9) "Private partner", any natural person, corporation, partnership, limited liability company, joint venture, business trust, nonprofit entity, other business entity, or any combination thereof;

(10) "Project", [a bridge to be owned by the commission and the Illinois department of transportation or any other suitable public body of the state of Illinois, which is located across the boundaries of the state of Illinois and the state of Missouri in a city not within a county to be financed, developed, and/or operated under agreement between the commission, a private partner, the Illinois department of transportation, and, if appropriate, any other suitable public body of the state of Illinois] **includes any bridge, street, road, highway, access road, interchange, intersection, traffic sign, traffic device, traffic or pedestrian control signal, parking lot, bus stop, station, garage, terminal, hanger, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit, pipelines, and any similar or related improvement or infrastructure;**

(11) "Public use", a finding by the commission that the project to be financed, developed, and/or operated by a private partner under sections 227.600 to 227.669 will improve or is needed

37 as a necessary addition to the [state highway system] **total transportation infrastructure needs**  
38 **of the state;**

39 (12) "Revenues", include but are not limited to the following which arise out of or in  
40 connection with the financing, development, and/or operation of the project:

41 (a) Income;

42 (b) Earnings;

43 (c) Proceeds;

44 (d) User fees;

45 (e) Lease payments;

46 (f) Allocations;

47 (g) Federal, state, and local moneys; or

48 (h) Private sector moneys, grants, bond proceeds, and/or equity investments;

49 (13) "State", the state of Missouri;

50 (14) ["State highway system", the state system of highways and bridges planned, located,  
51 relocated, established, acquired, constructed, and maintained by the commission under section  
52 30(b), article IV, Constitution of Missouri;

53 (15)] "User fees", tolls, fees, or other charges authorized to be imposed by the  
54 commission and collected by the private partner for the use of all or a portion of a project under  
55 a comprehensive agreement.

227.615. The commission may by commission minute approve the project if the  
2 commission determines the project will improve and is a needed addition to the [state highway  
3 system] **total transportation infrastructure needs of the state.**

227.645. 1. Any financing of the project may be in such amounts and upon such terms  
2 and conditions as may be determined by the commission and the private partner in the interim  
3 or comprehensive agreement. The commission and the private partner may use any and all  
4 revenues that may be available to them and may, to the fullest extent permitted by applicable  
5 law, issue debt, equity, or other securities or obligations.

6 2. The private partner may issue corporate bonds, private activity bonds, refunding  
7 bonds, notes, and other obligations, and may secure any of such obligations by mortgage, pledge,  
8 or deed of trust of any or all of the property and income of the private partner. The commission  
9 may contract with the private partner to assist in issuing bonds, notes, and other obligations  
10 under this subsection. The private partner shall not mortgage, pledge, or give a deed of trust on  
11 any real property or interests obtained by eminent domain acquired from the state of Missouri  
12 or any agency or political subdivision of the state. Bonds, notes, and other obligations issued  
13 under this subsection shall exclusively be the responsibility of the private partner payable solely  
14 out of private partner moneys and property and shall not constitute debt or liability of the

15 commission, the state of Missouri, or any other agency or political subdivision of the state. The  
16 private partner and the commission shall not be obligated to pay such bonds, notes, or other  
17 obligations with any moneys other than those specifically pledged to repayment. Any such  
18 bonds, notes, or other obligations issued by the private partner or the commission shall state on  
19 the face that they are not obligations of the state of Missouri or any agency or political  
20 subdivision of the state. Any private partner bonds issued under this subsection, the interest  
21 thereon, and any proceeds from such bonds shall be exempt from taxation by the state of  
22 Missouri for all purposes except the state estate tax.

23         3. The private partner may also contract with the commission for the commission to  
24 issue state road bonds for the project and to loan the proceeds thereof to the private partner.

25         **4. The private partner may also invest in a project with private funds raised for**  
26 **such purposes. In the event that a private partner invests private funds in a project, and**  
27 **such partner has a Missouri income tax liability for a tax year before the investment in a**  
28 **project, the income tax liability shall be decreased in an amount equal to the partner's**  
29 **investment in such project.**

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