

HOUSE AMENDMENT NO. _____
TO
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Offered By

1 AMEND House Amendment No. _____ to House Committee Substitute for Senate Substitute for
2 Senate Committee Substitute for Senate Bill No. 72, Page 1, Line 2, by inserting after the number
3 "72," the following:

4
5 "Page 11, Section 70.631, Line 24, by inserting after all of said section and line the following:

6
7 "107.170. 1. As used in this section, the following terms mean:

8 (1) "Contractor":

9 (a) A person or business entity who:

10 a. Provides or arranges for construction services on a public works project under contract to
11 a public entity for a governmental ~~[purpose]~~ use; or

12 b. Contracts, provides, or arranges for construction services on a public works project for a
13 nongovernmental ~~[purpose]~~ use when acting as a lessee, agent, designee, or representative of a
14 public entity;

15 (b) Contractor shall not include:

16 a. Professional engineers, architects or land surveyors licensed pursuant to chapter 327;

17 b. Those who provide environmental assessment services;

18 c. Those who design, create or otherwise provide works of art under a city's formally
19 established program for the acquisition and installation of works of art and other aesthetic
20 adornments to public buildings and property; or

21 d. A construction manager not-at-risk within the meaning of section 8.675, or who does not
22 otherwise enter into contracts with contractors for the furnishing of labor, materials, or services to
23 the public works project;

24 (2) "Public entity", ~~[any official, board, commission or agency of]~~ this state ~~[or]~~; any county,
25 city, town, township, municipality, school~~[, road]~~ district, or other political subdivision of this state;
26 or any official, board, commission, or agency of any of the preceding entities;

27 (3) "Public official", any official, officer, employee, or member of a governing body or
28 board of a public entity, whether elected, employed, or appointed, and any person serving in a

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1 capacity that could, under applicable law or at equity, be personally liable for the failure to require
 2 the furnishing of a payment bond under this section;

3 (4) "Public works", the erection, construction, alteration, repair or improvement of any
 4 building, road, street, public utility or other public facility owned by the public entity, including
 5 work for nongovernmental [~~purposes~~] uses.

6 2. It is hereby made the duty of all public entities in this state, in making contracts for public
 7 works exempt from attachment and execution under section 513.455, the cost of which is estimated
 8 to exceed fifty thousand dollars, to be performed for:

9 (1) The public entity; or

10 (2) The public entity's lessee, agent, designee, or representative on work for
 11 nongovernmental [~~purposes~~] uses,

12
 13 to require every contractor for such work to furnish to the public entity a bond with good and
 14 sufficient sureties, in an amount fixed by the public entity. Such bond, among other conditions,
 15 shall be conditioned for the payment of any and all materials, incorporated, consumed or used in
 16 connection with the construction of such work; all insurance premiums, both for compensation, and
 17 for all other kinds of insurance, on said work; and for all labor performed in such work whether by a
 18 subcontractor, a supplier at any tier, or otherwise. Remote suppliers shall not be entitled to recovery
 19 under the bond required by this section, unless such suppliers shall have given written notice to the
 20 contractor that it has not been paid within ninety days of the time the supplier last supplied materials
 21 on the public works project. For purposes of this provision, a "remote supplier" is any material
 22 supplier to a public works project having a contract with a second, or lower, tier subcontractor, or
 23 with another material supplier of any tier.

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

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

35 5. (1) No public official or other person who would otherwise be personally liable under
 36 applicable law or at equity to a contractor, subcontractor, supplier at any tier, or otherwise, by reason
 37 of the failure of a public entity to require a contractor to furnish a payment bond as required by this
 38 section shall be so liable unless the contractor provides, prior to the time the contract is executed, to
 39 the presiding official or officer and to the secretary, clerk, or similar official or officer of the public

1 entity a written notice in bold, ten-point or greater type identifying the persons who will have
 2 personal liability for payment and otherwise providing as follows:

NOTICE OF PERSONAL LIABILITY

Failure of the [insert the legal name of the public entity] to pay [insert the legal name of the contractor], the contractor furnishing this notice, under the contract for [identify the construction services or public works project], or the failure of the contractor to pay any person who supplies materials or services for the work described in the contract, can result in the personal liability of [identify all the public officials or other persons to be held liable, by title and legal name] and their estate(s) for such payment if no payment bond meeting the requirements of section 107.170, RSMo, has been furnished.

3 (2) Compliance with this subsection shall be a condition precedent to the personal liability
 4 of any public official or other person with respect to the claim for payment of such original
 5 contractor, any subcontractor or supplier, or any other person under or with respect to a contract for
 6 any work that is the subject of this section.

7 (3) Any original contractor who fails to provide the written notice set out in this subsection,
 8 with intent to defraud, shall be guilty of a class B misdemeanor.

9 (4) A public entity may defend, save harmless and indemnify any of its [officers and
 10 employees] public officials, whether [elective or appointive] elected, employed, or appointed,
 11 against any claim or demand, whether groundless or otherwise arising out of an alleged act or
 12 omission occurring in the performance of a duty under this section. The provisions of this
 13 subsection do not apply in case of malfeasance in office or willful or wanton neglect of duty.

14 6. [Nothing in this section shall be deemed to require any contractor who provides
 15 construction services for a public works project used for nongovernmental purposes and who
 16 contracts with a public entity's lessee, agent, designee, or representative on such public works
 17 project used for nongovernmental purposes to furnish a bond when the public entity's lessee, agent,
 18 designee, or representative is required under this section to furnish a bond] If consent that meets the
 19 requirements of subsection 2 of section 513.455 has been executed and recorded as therein required,
 20 no bond is required to be furnished under this section.

21 7. Nothing in this section shall be deemed to require any public entity's lessee, agent,
 22 designee, or representative that contracts with a contractor to provide construction services for a
 23 public works project to be used for nongovernmental uses to furnish a bond when the contractor is
 24 required to furnish a bond under this section or in fact furnishes a complying bond.

25 8. The providing of a bond under this section shall preclude the filing of a mechanic's lien
 26 under chapter 429 by any subcontractor or supplier. Any mechanic's lien filed in violation hereof
 27 shall be void and unenforceable and shall be summarily discharged by a judge of the county in
 28 which the mechanic's lien is filed."; and

29
 30 Further amend said bill, "; and

- 1
- 2 Further amend said bill by amending the title, enacting clause, and intersectional references
- 3 accordingly.
- 4
- 5 Amends Amendment # 0524H11.17H