

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 181, Page 1, Section  
2 A, Line 7, by inserting after all of said section and line the following:

3  
4 "107.170. 1. As used in this section, the following terms mean:

5 (1) "Contractor":

6 (a) A person or business entity who:

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

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

12 (b) Contractor shall not include:

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

14 b. Those who provide environmental assessment services;

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

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

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

24 (3) "Public official", any official, officer, employee, or member of a governing body or  
25 board of a public entity, whether elected, employed, or appointed, and any person serving in a  
26 capacity that could, under applicable law or at equity, be personally liable for the failure to require  
27 the furnishing of a payment bond under this section;

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

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

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

(1) The public entity; or

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

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

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

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

5. (1) No public official or other person who would otherwise be personally liable under applicable law or at equity to a contractor, subcontractor, supplier at any tier, or otherwise, by reason of the failure of a public entity to require a contractor to furnish a payment bond as required by this section shall be so liable unless the contractor provides, prior to the time the contract is executed, to the presiding official or officer and to the secretary, clerk, or similar official or officer of the public entity a written notice in bold, ten-point or greater type identifying the persons who will have 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.

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

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

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

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

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

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

Further amend said bill, Page 26, Section 436.572, Line 2, by inserting after all of said section and line the following:

"513.455. 1. All courthouses, jails, clerks' offices, and other buildings ~~[owned by any county or municipality]~~ and improvements, and the lots on which they ~~[stand]~~ are located, and all

1 burial grounds[;] and other lands, owned by this state, any public body corporate and politic of this  
 2 state, or any county, city, town, township, municipality, road district, water district, sewer district,  
 3 fire district, library district, hospital district, school district, or other political subdivision of this  
 4 state shall be exempt from attachment and execution.

5 2. If the state or any entity described in subsection 1 of this section enters into a lease or  
 6 other agreement with a lessee, agent, designee, or representative who is to provide or arrange  
 7 construction services on a project for a nongovernmental purpose, the state or entity may consent to  
 8 the subjection of the project and the land upon which it is located to the attachment of mechanics'  
 9 liens filed under chapter 429. Any such consent shall be in writing specifically stating such consent,  
 10 shall contain a legal description of the property to be subject to attachment, shall be signed and  
 11 acknowledged by its authorized official or officer in a form suitable for recording, and shall be  
 12 recorded in the office of the recorder of deeds for the county in which the property is located. Such  
 13 consent may be included as part of any lease or other agreement, or a memorandum thereof,  
 14 executed and recorded in the same manner. Upon such recording, the property described therein  
 15 shall be subject to the provisions of chapter 429 as if the property were owned by a private person.

16 522.300. Every person furnishing material or performing labor, either as an individual or as  
 17 a subcontractor for any contractor, with the state, or any county, city, town, township, school [~~or~~  
 18 ~~road~~] district, or other political subdivision where bond shall be executed as provided in section  
 19 107.170, shall have the right to sue on such bond in the name of the state, county, city, town,  
 20 township, school [~~or road~~] district, or other political subdivision for his use and benefit, and in such  
 21 suit the plaintiff shall file a copy of such bond, certified by the party or parties in whose charge such  
 22 bond shall be, which copy shall, unless execution thereof be denied under oath, be prima facie  
 23 evidence of the execution and delivery of the original; provided, however, this section and section  
 24 107.170 shall not be taken to in any way make the state, county, city, town, township, school [~~or~~  
 25 ~~road~~] district, or other political subdivision liable to such subcontractor, materialman or laborer to  
 26 any greater extent than it was liable under the law as it stood before the adoption originally of said  
 27 sections."; and

28  
 29 Further amend said bill by amending the title, enacting clause, and intersectional references  
 30 accordingly.