

FIRST REGULAR SESSION

HOUSE BILL NO. 199

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FALKNER.

0316H.03I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 107.170 and 513.455, RSMo, and to enact in lieu thereof two new sections relating to contracts with public entities.

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

Section A. Sections 107.170 and 513.455, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 107.170 and 513.455, to read as follows:

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

2 (1) "Contractor":

3 (a) A person or business entity who:

4 a. Provides or arranges for construction services on a public works project under
5 contract to a public entity for a governmental purpose; or

6 b. Contracts, provides, or arranges for construction services on a public works project
7 for a nongovernmental purpose when acting as a lessee, agent, designee, or representative of a
8 public entity;

9 (b) Contractor shall not include:

10 a. Professional engineers, architects or land surveyors licensed pursuant to chapter
11 327;

12 b. Those who provide environmental assessment services;

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

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.

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

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

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

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

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

33 (1) The public entity; or

34 (2) The public entity's lessee, agent, designee, or representative on work for
35 nongovernmental purposes,

36

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

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

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

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

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

74 7. Nothing in this section shall be deemed to require any public entity's lessee,
75 **agent, designee, or representative that contracts with a contractor to provide**
76 **construction services for a public works project intended be leased primarily to a**
77 **private entity for nongovernmental use to furnish a bond when the contractor is**
78 **required to furnish a bond under this section or in fact furnishes a complying bond.**

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

513.455. 1. (1) **As used in this section, "entity" means this state, a public body**
2 **corporate and politic of this state, a county, a city, a town, a township, a municipality, a**
3 **road district, a water district, a sewer district, a fire district, a library district, a hospital**
4 **district, a school district, or any other political subdivision of this state.**

5 (2) All ~~[courthouses, jails, clerks' offices and other buildings owned by any county or~~
6 ~~municipality, and the lots on which they stand, and all burial grounds,]~~ **of the following**

7 **owned by an entity defined in subdivision (1) of this subsection** shall be exempt from
8 attachment and execution:

- 9 (a) **Courthouses;**
- 10 (b) **Jails;**
- 11 (c) **Clerks' offices;**
- 12 (d) **Other buildings and improvements;**
- 13 (e) **Lots upon which structures listed in paragraphs (a) to (d) of this subdivision**
14 **are located; and**
- 15 (f) **Burial grounds and other lands.**

16 **2. If an entity defined in subdivision (1) of subsection 1 of this section enters into**
17 **a lease or other agreement with a lessee, agent, designee, or representative who is to**
18 **provide or arrange construction services on a project intended be leased primarily to a**
19 **private entity for nongovernmental use, the entity may consent to the subjection of the**
20 **project and the land upon which it is located to the attachment of mechanics' liens filed**
21 **under chapter 429. Any such consent shall be in writing specifically stating such**
22 **consent, shall contain a legal description of the property to be subject to attachment,**
23 **shall be signed and acknowledged by its authorized official or officer in a form suitable**
24 **for recording, and shall be recorded in the office of the recorder of deeds for the county**
25 **in which the property is located. Such consent may be included as part of any lease or**
26 **other agreement, or a memorandum thereof, executed and recorded in the same**
27 **manner. Upon such recording, the property described therein shall be subject to the**
28 **provisions of chapter 429 as if the property were owned by a private person.**

✓