

SECOND REGULAR SESSION

# HOUSE BILL NO. 2437

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE VAN SCHOIACK.

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JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal section 537.600, RSMo, and to enact in lieu thereof one new section relating to liability of private contractors.

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

Section A. Section 537.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.600, to read as follows:

537.600. 1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:

6 (1) Injuries directly resulting from the negligent acts or omissions by public 7 employees arising out of the operation of motor vehicles or motorized vehicles within the 8 course of their employment;

9 (2) Injuries caused by the condition of a public entity's property if the plaintiff 10 establishes that the property was in dangerous condition at the time of the injury, that the 11 injury directly resulted from the dangerous condition, that the dangerous condition created a 12 reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a 13 negligent or wrongful act or omission of an employee of the public entity within the course of 14 his employment created the dangerous condition or a public entity had actual or constructive 15 notice of the dangerous condition in sufficient time prior to the injury to have taken measures 16 to protect against the dangerous condition. In any action under this subdivision wherein a 17 plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a

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.

18 highway or road, which was designed and constructed prior to September 12, 1977, the public  
19 entity shall be entitled to a defense which shall be a complete bar to recovery whenever the  
20 public entity can prove by a preponderance of the evidence that the alleged negligent,  
21 defective, or dangerous design reasonably complied with highway and road design standards  
22 generally accepted at the time the road or highway was designed and constructed.

23       2. The express waiver of sovereign immunity in the instances specified in  
24 subdivisions (1) and (2) of subsection 1 of this section are absolute waivers of sovereign  
25 immunity in all cases within such situations whether or not the public entity was functioning  
26 in a governmental or proprietary capacity and whether or not the public entity is covered by a  
27 liability insurance for tort.

28       3. The term "public entity" as used in this section shall include any multistate  
29 compact agency created by a compact formed between this state and any other state which has  
30 been approved by the Congress of the United States.

31       4. **When acting within the scope of a contract with the Missouri department of  
32 transportation, private contractors and subcontractors performing work in accordance  
33 with the plans and specifications approved by the Missouri department of  
34 transportation shall have sovereign or governmental tort immunity to the same extent  
35 as a public entity, including any limitation on awards for liability provided for in section  
36 537.610. The immunity provided under this subsection, for any claims arising thereof,  
37 shall commence upon the official notice to proceed and such immunity shall continue  
38 after the Missouri department of transportation formally accepts the completed project.  
39 Such immunity shall be subject to the exceptions that are set forth in this section.**

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