

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2926
103RD GENERAL ASSEMBLY

6566H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

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

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Section A. Section 537.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.600, to read as follows: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

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

(2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public

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.

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 government contract awarded by the**
32 **Missouri department of transportation, private contractors, subcontractors, engineers,**
33 **or the employees thereof performing work in accordance with the plans and**
34 **specifications approved by such department shall have sovereign or governmental**
35 **tort immunity to the same extent as the Missouri department of transportation,**
36 **including any limitation on awards for liability provided under section 537.610.**

37 **5. A contractor or subcontractor shall not be liable for claims arising from the**
38 **design, condition, or maintenance of a transportation project occurring after execution**
39 **of the contract and prior to the commencement of physical construction activities on the**
40 **project site.**

41 **6. During performance of physical construction activities, a contractor,**
42 **subcontractor, or employee thereof shall be deemed an agent of the state for purposes**
43 **of sovereign or governmental tort immunity when performing work within the scope of**
44 **the contract and in material compliance with plans, specifications, or directives**
45 **approved by the Missouri department of transportation, applicable to the condition**
46 **alleged to have caused injury, and without authority to materially deviate from such**
47 **plans or directives.**

48 **7. Upon acceptance of the project, including partial acceptance, substantial**
49 **completion, or final acceptance by the Missouri department of transportation, liability**
50 **for the design, condition, maintenance, and performance of the completed project shall**
51 **rest with the public entity, and the contractor or subcontractor shall not be liable for**
52 **claims arising thereafter.**

53 **8. The immunity provided under this subsection shall not apply to negligent or**
54 **reckless acts, failure to materially comply with approved plans and specifications, or**
55 **acts or omissions outside the scope of the contract.**

56 **9. Such immunity shall be subject to the exceptions otherwise set forth in this**
57 **section.**

✓