

SECOND REGULAR SESSION

# HOUSE BILL NO. 1724

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FALKNER.

3752H.011

DANA RADEMAN MILLER, Chief Clerk

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## 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, with penalty provisions.

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*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- Section A. Sections 107.170 and 513.455, RSMo, are repealed and two new sections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,

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

69 **NOTICE OF PERSONAL LIABILITY**

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

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

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

86 (4) **A public entity may defend, save harmless and indemnify any of its ~~[officers and~~**  
87 **employees] public officials, whether ~~[elective or appointive]~~ elected, employed, or**  
88 **appointed, against any claim or demand, whether groundless or otherwise arising out of**

89 an alleged act or omission occurring in the performance of a duty under this section. The  
90 provisions of this subsection do not apply in case of malfeasance in office or willful or  
91 wanton neglect of duty.

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

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

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

513.455. 1. All courthouses, jails, clerks' offices, and other buildings ~~[owned by any~~  
2 ~~county or municipality]~~ **and improvements, and the lots on which they [stand] are located,**  
3 **and all burial grounds[-] and other lands, owned by this state, any public body corporate**  
4 **and politic of this state, or any county, city, town, township, municipality, road district,**  
5 **water district, sewer district, fire district, library district, hospital district, school**  
6 **district, or other political subdivision of this state, shall be exempt from attachment and**  
7 **execution.**

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

19 **Upon such recording, the property described therein shall be subject to the provisions of**  
20 **chapter 429 as if the property were owned by a private person.**

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