

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 540

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

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ADRIANE D. CROUSE, Secretary.

2282S.05P

AN ACT

To repeal section 142.803 as enacted by house bill no. 2141, ninety-seventh general assembly, second regular session, RSMo, and to enact in lieu thereof ten new sections relating to transportation.

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

Section A. Section 142.803 as enacted by house bill no. 2141, ninety-
2 seventh general assembly, second regular session, RSMo, are repealed and ten
3 new sections enacted in lieu thereof, to be known as sections 142.803, 238.500,
4 238.510, 238.530, 238.540, 238.550, 238.560, 238.570, 238.580, and 1, to read as
5 follows:

142.803. 1. A tax is levied and imposed on all motor fuel used or
2 consumed in this state as follows:

3 (1) Motor fuel, seventeen cents per gallon **until December 31,**
4 **2015. Thereafter, such tax shall be eighteen and one-half cents per**
5 **gallon except on diesel fuel. Beginning January 1, 2016, the tax on**
6 **diesel fuel shall be twenty and one-half cents per gallon;**

7 (2) Alternative fuels, not subject to the decal fees as provided in section
8 142.869, with a power potential equivalent of motor fuel. In the event alternative
9 fuel, which is not commonly sold or measured by the gallon, is used in motor
10 vehicles on the highways of this state, the director is authorized to assess and
11 collect a tax upon such alternative fuel measured by the nearest power potential
12 equivalent to that of one gallon of regular grade gasoline. The determination by
13 the director of the power potential equivalent of such alternative fuel shall be

14 prima facie correct;

15 (3) Aviation fuel used in propelling aircraft with reciprocating engines,
16 nine cents per gallon as levied and imposed by section 155.080 to be collected as
17 required under this chapter;

18 (4) Compressed natural gas fuel, five cents per gasoline gallon equivalent
19 until December 31, 2019, eleven cents per gasoline gallon equivalent from
20 January 1, 2020, until December 31, 2024, and then seventeen cents per gasoline
21 gallon equivalent thereafter. The gasoline gallon equivalent and method of sale
22 for compressed natural gas shall be as published by the National Institute of
23 Standards and Technology in Handbooks 44 and 130, and supplements thereto
24 or revisions thereof. In the absence of such standard or agreement, the gasoline
25 gallon equivalent and method of sale for compressed natural gas shall be equal
26 to five and sixty-six-hundredths pounds of compressed natural gas. All applicable
27 provisions contained in this chapter governing administration, collections, and
28 enforcement of the state motor fuel tax shall apply to the tax imposed on
29 compressed natural gas, including but not limited to licensing, reporting,
30 penalties, and interest;

31 (5) Liquefied natural gas fuel, five cents per diesel gallon equivalent until
32 December 31, 2019, eleven cents per diesel gallon equivalent from January 1,
33 2020, until December 31, 2024, and then seventeen cents per diesel gallon
34 equivalent thereafter. The diesel gallon equivalent and method of sale for
35 liquefied natural gas shall be as published by the National Institute of Standards
36 and Technology in Handbooks 44 and 130, and supplements thereto or revisions
37 thereof.

38 In the absence of such standard or agreement, the diesel gallon equivalent and
39 method of sale for liquefied natural gas shall be equal to six and six-hundredths
40 pounds of liquefied natural gas. All applicable provisions contained in this
41 chapter governing administration, collections, and enforcement of the state motor
42 fuel tax shall apply to the tax imposed on liquefied natural gas, including but not
43 limited to licensing, reporting, penalties, and interest;

44 (6) If a natural gas, compressed natural gas, or liquefied natural gas
45 connection is used for fueling motor vehicles and for another use, such as heating,
46 the tax imposed by this section shall apply to the entire amount of natural gas,
47 compressed natural gas, or liquefied natural gas used unless an approved
48 separate metering and accounting system is in place.

49 2. All taxes, surcharges and fees are imposed upon the ultimate consumer,

50 but are to be precollected as described in this chapter, for the facility and
51 convenience of the consumer. The levy and assessment on other persons as
52 specified in this chapter shall be as agents of this state for the precollection of the
53 tax.

54 **3. The provisions of this section shall be effective August 28,**
55 **2015, provided however that the provisions of subdivisions (4) to (6) of**
56 **subsection 1 of this section shall become effective January 1, 2016.**

238.500. 1. Sections 238.500 to 238.580 may be cited as the
2 **"Public-Private Partnership Authority Act" or the "P3 Authority Act".**

238.510. As used in sections 238.500 to 238.580, the following
2 **terms mean:**

3 **(1) "Contract", any purchase and sale agreement, lease, service**
4 **agreement, franchise agreement, concession agreement or other written**
5 **agreement entered into under sections 238.500 to 238.580 with respect**
6 **to the provision of a public service and any related project;**

7 **(2) "Department", the Missouri department of transportation;**

8 **(3) "Private sector entity", any corporation, whether for profit or**
9 **not for profit, limited liability company, partnership, limited liability**
10 **partnership, sole proprietorship, business trust, joint venture, or other**
11 **entity, whether foreign or domestic, but shall not mean the state, a**
12 **political subdivision of the state, or a public or governmental entity,**
13 **agency, or instrumentality of the state;**

14 **(4) "Project", includes construction, reconstruction,**
15 **rehabilitation, renovation, installation, or enlargement of any bridge,**
16 **street, road, highway, access road, interchange, intersection, signing,**
17 **signalization, shelter, or rest area and any similar or related**
18 **improvement to transportation infrastructure as part of Interstate 70**
19 **in existence as of August 28, 2015;**

20 **(5) "Proposer", a private sector entity, a local or regional public**
21 **entity or agency, or any group or combination thereof, submitting**
22 **qualifications or a proposal for a public-private partnership contract;**

23 **(6) "Public service", a service provided for a public purpose of**
24 **the department and identified in a request for qualifications or**
25 **proposals under sections 238.500 to 238.580;**

26 **(7) "User fees", tolls, fees, rents, or other charges authorized to**
27 **be imposed by the department and collected by the private sector**
28 **entity under the terms of a public-private partnership agreement.**

238.530. 1. There is established a board to be known as the
2 "Building Missouri's Future Board".

3 (1) The board shall be composed of three members to be
4 appointed by the governor by and with the advice and consent of the
5 senate.

6 (2) Gubernatorial appointees shall have significant expertise and
7 experience in one or more of the following fields:

8 (a) Transportation;

9 (b) Finance; or

10 (c) Land use and planning.

11 (3) All appointees shall be citizens of the state of Missouri.

12 (4) Initial members of the board shall serve staggered terms with
13 one member serving one year, the second member serving two years,
14 and third member serving three years.

15 (5) Appointee terms thereafter shall be for three years. No
16 appointee may hold a position on the board for longer than two terms.

17 (6) Vacancies shall be filled for the duration of the original term.

18 (7) The chairmanship of the board shall rotate on an annual
19 basis among the three members of the board.

20 2. The duties and functions of the board shall include approval
21 of any proposed contract between the department and a private sector
22 entity to establish a public-private partnership agreement under the
23 terms of section 238.550.

24 3. The board may incur such other reasonable and proper costs
25 and expenses as are related to the duties and functions allowed by
26 statute.

27 4. Notwithstanding the provisions of sections 238.500 to 238.580
28 to the contrary, any agreement between the department and a private
29 sector entity providing for the construction, operation, or maintenance
30 of a highway and collection of user fees relating to such services shall
31 be approved by a concurrent resolution of the general assembly before
32 becoming effective.

33 5. The board is authorized to adopt those rules that are
34 reasonable and necessary to accomplish the limited duties specifically
35 delegated within this section. Any rule or portion of a rule, as the term
36 is defined in section 536.010, that is created under the authority
37 delegated in this section shall become effective only if it complies with

38 and is subject to all of the provisions of chapter 536 and, if applicable,
39 section 536.028. This section and chapter 536 are nonseverable and if
40 any of the powers vested with the general assembly pursuant to chapter
41 536 to review, to delay the effective date or to disapprove and annul a
42 rule are subsequently held unconstitutional, then the grant of
43 rulemaking authority and any rule proposed or adopted after August
44 28, 2015, shall be invalid and void.

238.540. The Missouri department of transportation is charged
2 with providing a public service shall have the authority to develop and
3 implement a competitive process for identifying projects to be
4 procured, funded, designed and built through public-private
5 partnerships governed by comprehensive agreements entered into by
6 the department and the selected, qualified proposer.

238.550. 1. The department may identify potential projects and
2 public services for which a public-private partnership may be
3 appropriate to improve public operational efficiencies, improve
4 environmental performance, promote public safety, attract private
5 investment in the state, and minimize government liabilities.

6 2. After the department identifies a potential partnership for a
7 project or public service, the department shall conduct a public sector
8 comparator study of the potential partnership. The members of the
9 building Missouri's future board shall determine the scope of each
10 public sector comparator, which scope shall depend on the type of
11 proposed project and the nature of the public service under
12 consideration for the partnership. The following shall be considered
13 as components of a public sector comparator:

14 (1) The definition of the public need served by the proposed
15 partnership;

16 (2) The cost required to meet the public need served by the
17 public service under traditional procurements or traditional public
18 entity or commission operations;

19 (3) An analysis of alternative methods for providing the public
20 services under consideration, including but not limited to design-build,
21 design-build-finance, design-build-fiance-operate-maintain, service
22 contracts or leases, and how the alternative methods would meet the
23 need served by the public service;

24 (4) An evaluation of the costs and benefits of using an alternative

25 **method or public-private partnership to render a public service, which**
26 **shall include:**

27 **(a) The potential cost of utilizing an alternative method;**

28 **(b) The operation and technological risks involved in utilizing**
29 **an alternative method;**

30 **(c) A comparative analysis of rendering the public service by**
31 **allowing the department to utilize traditional methods;**

32 **(d) The financial impact the partnership will have on the**
33 **department;**

34 **(e) The impact the partnership is projected to have on job**
35 **formation, economic growth, and the community in which the public**
36 **service is to be rendered.**

37 **3. The department shall develop and use a competitive**
38 **procurement process to form a public-private partnership for the**
39 **purpose of developing, financing, or operating a project. The**
40 **department shall publish notice of the intent to enter into a contract**
41 **for a partnership for public service or related project and shall publish**
42 **notice of the intent to enter into a contract for a partnership for public**
43 **service or related project and shall prepare a request for private sector**
44 **entities interested in serving as proposers for the partnership. The**
45 **notice shall notify interested parties of the opportunity to submit their**
46 **qualifications for consideration and shall be published at least thirty**
47 **days prior to the deadline for submitting those qualifications. The**
48 **department also may advertise the information contained in the notice**
49 **in appropriate and widely available print and electronic public and**
50 **professional media and otherwise notify as it sees fit those parties**
51 **believed to be interested in providing the public service and in any**
52 **related project.**

53 **4. After inviting qualifications, the department shall evaluate the**
54 **qualifications submitted and may hold discussions with proposers to**
55 **further explore their qualifications. Following this evaluation, the**
56 **department may determine a list of qualified proposers based on**
57 **criteria in the invitation, and invite only those proposers to submit a**
58 **proposal.**

59 **5. The department shall prepare a request for proposal and the**
60 **proposed partnership contract which shall contain the terms and**
61 **conditions to carry out and effectuate the purposes of sections 238.500**

62 to 238.580 which may include:

63 (1) The duration of the contract, which shall not exceed seventy-
64 five years;

65 (2) Rates or fees for the public services to be provided or
66 methods or procedures for the determination of such rates or fees;

67 (3) Standards for the public services to be provided;

68 (4) Standards and responsibilities for operation and maintenance
69 of any related project;

70 (5) Required financial assurances;

71 (6) Financial and other data reporting requirements;

72 (7) Bases and procedures for termination of the contract and
73 retaking of possession or title to the project; and

74 (8) Events of default and remedies upon default, including
75 mandamus, suits in equity, actions at law, or any combination of those
76 remedial actions.

77 6. After proposals are received, the department shall evaluate
78 the proposals submitted using the criteria established in its request for
79 proposal and may hold discussions with proposers to further explore
80 their proposals, the scope and nature of the public service or services
81 they would provide, and the various technical approaches they may
82 take regarding the public service and any related project. Following
83 this evaluation, the department shall select the proposer ranked most
84 qualified to provide the public service and shall negotiate and execute
85 a comprehensive agreement establishing the terms for the financing,
86 development, and operation of the project.

87 7. Upon failure to negotiate a comprehensive agreement with the
88 proposer ranked most qualified, the department shall inform the
89 proposer in writing of the termination of negotiations and may enter
90 into negotiations with the proposer ranked next most qualified. If
91 negotiations again fail, the same procedure may be followed with each
92 next most qualified proposer selected and ranked, in order of ranking,
93 until a comprehensive agreement is negotiated and executed.

94 8. If the department fails to negotiate a comprehensive
95 agreement with any of the ranked proposers, the department may
96 terminate the process or select and rank additional proposers, based
97 on their qualifications or proposals, and the negotiations shall continue
98 as with the proposers initially selected and ranked until a

99 comprehensive agreement is negotiated.

100 9. The authorized representative of the department may reject
101 any and all submissions of qualifications or proposals, and may
102 unilaterally terminate the procurement process at any point.

238.560. The exercise of the powers granted by sections 238.500
2 to 238.580 will be for the benefit of the people of the state and shall be
3 liberally construed to effect the purposes thereof. As the performance
4 of public services will constitute the performance of essential
5 government functions, any project or part thereof owned by the state
6 and used for performing any public service pursuant to a contract
7 entered into under sections 238.500 to 238.580 that would be exempt
8 from taxation or assessments in the absence of such contract shall
9 remain exempt from taxation and assessments levied by the state and
10 its subdivisions to the same extent as if not subject to that
11 contract. The gross receipts and income of a successful proposer
12 derived from providing public services under a contract through a
13 project owned by the state shall be exempt from taxation levied by the
14 state and its subdivisions. Any transfer or lease between a proposer
15 and the state of a project or part thereof, or item included or to be
16 included in the project, shall be exempt from the taxes levied by the
17 state and its political subdivisions if the state is retaining ownership
18 of the project or part thereof that is being transferred or leased.

238.570. 1. The department shall have the authority to impose or
2 collect user fees and they shall be empowered to delegate that
3 authority to a private sector entity under the terms of a comprehensive
4 public-private partnership agreement.

5 2. The department may retain or contract for the services of
6 commercial appraisers, engineers, investment bankers, financial
7 advisers, accounting experts, and other consultants, independent
8 contractors, or providers of professional services as are necessary to
9 carry out the department's powers and duties under sections 238.500 to
10 238.580, including the identification of public services and any related
11 projects to be subject to invitations for qualifications or proposals
12 under sections 238.500 to 238.580, the development of those invitations
13 and related evaluation criteria, the evaluation of those invitations, and
14 negotiation of any contract under sections 238.500 to 238.580.

238.580. If any provision of sections 238.500 to 238.580 or the

2 application thereof to anyone or any circumstances is held invalid, the
3 remainder of those sections and the application of such provisions to
4 others or other circumstances shall not be affected thereby.

Section 1. Notwithstanding the provisions of section 1.140 to the
2 contrary, the provisions of section 142.803 shall be nonseverable from
3 sections 238.500 to 238.580, and if any provision of sections 238.500 to
4 238.580 is for any reason held to be invalid, such decision shall
5 invalidate section 142.803.

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