

FIRST REGULAR SESSION

# SENATE BILL NO. 47

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WRIGHT-JONES.

Pre-filed December 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

0242S.011

## AN ACT

To repeal section 37.020, RSMo, and to enact in lieu thereof seven new sections relating to state contracts.

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

Section A. Section 37.020, RSMo, is repealed and seven new sections  
2 enacted in lieu thereof, to be known as sections 37.020, 37.760, 37.762, 37.764,  
3 37.766, 37.768, and 37.770, to read as follows:

37.020. 1. As used in this section, the following words and phrases mean:

2 (1) "Certification", the determination, through whatever procedure is used  
3 by the office of administration, that a legal entity is a socially and economically  
4 disadvantaged small business concern for purposes of this section;

5 (2) "Department", the office of administration and any public institution  
6 of higher learning in the state of Missouri;

7 (3) "Minority business enterprise", a business that is:

8 (a) A sole proprietorship owned and controlled by a minority;

9 (b) A partnership or joint venture owned and controlled by minorities in  
10 which at least fifty-one percent of the ownership interest is held by minorities  
11 and the management and daily business operations of which are controlled by one  
12 or more of the minorities who own it; or

13 (c) A corporation or other entity whose management and daily business  
14 operations are controlled by one or more minorities who own it, and which is at  
15 least fifty-one percent owned by one or more minorities, or if stock is issued, at  
16 least fifty-one percent of the stock is owned by one or more minorities;

17 (4) "Socially and economically disadvantaged individuals", individuals,  
18 regardless of gender, who have been subjected to racial, ethnic, or sexual

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 prejudice or cultural bias because of their identity as a member of a group  
20 without regard to their individual qualities and whose ability to compete in the  
21 free enterprise system has been impaired due to diminished capital and credit  
22 opportunities as compared to others in the same business area. In determining  
23 the degree of diminished credit and capital opportunities the office of  
24 administration shall consider, but not be limited to, the assets and net worth of  
25 such individual;

26 (5) "Socially and economically disadvantaged small business concern", any  
27 small business concern:

28 (a) Which is at least fifty-one percentum owned by one or more socially  
29 and economically disadvantaged individuals; or, in the case of any publicly owned  
30 business, at least fifty-one percentum of the stock of which is owned by one or  
31 more socially and economically disadvantaged individuals; and

32 (b) Whose management and daily business operations are controlled by  
33 one or more of such individuals;

34 (6) "Women's business enterprise", a business that is:

35 (a) A sole proprietorship owned and controlled by a woman;

36 (b) A partnership or joint venture owned and controlled by women in  
37 which at least fifty-one percent of the ownership interest is held by women and  
38 the management and daily business operations of which are controlled by one or  
39 more of the women who own it; or

40 (c) A corporation or other entity whose management and daily business  
41 operations are controlled by one or more women who own it, and which is at least  
42 fifty-one percent owned by women, or if stock is issued, at least fifty-one percent  
43 of the stock is owned by one or more women.

44 2. [The office of administration, in consultation with each department,  
45 shall establish and implement a plan to increase and maintain the participation  
46 of certified socially and economically disadvantaged small business concerns or  
47 minority business enterprises, directly or indirectly, in contracts for supplies,  
48 services, and construction contracts, consistent with goals determined after an  
49 appropriate study conducted to determine the availability of socially and  
50 economically disadvantaged small business concerns and minority business  
51 enterprises in the marketplace. Such study shall be completed by December 31,  
52 1991. The commissioner of administration shall appoint an oversight review  
53 committee to oversee and review the results of such study. The committee shall  
54 be composed of nine members, four of whom shall be members of business, three

55 of whom shall be from staff of selected departments, one of whom shall be a  
56 member of the house of representatives, and one of whom shall be a member of  
57 the senate.] **The office of administration, in consultation with each**  
58 **department, shall establish and implement a plan to increase and**  
59 **maintain the participation of certified socially and economically**  
60 **disadvantaged small business concerns, minority business enterprises**  
61 **and women's business enterprises, directly or indirectly, in contracts**  
62 **for supplies, services, and construction contracts, consistent with goals**  
63 **determined after an appropriate study conducted to determine the**  
64 **availability of socially and economically disadvantaged small business**  
65 **concerns and minority business enterprises in the marketplace. Such**  
66 **study shall be completed by December 31, 2013. The commissioner of**  
67 **administration shall appoint an oversight review committee to oversee**  
68 **and review the results of such study. The committee shall be composed**  
69 **of nine members, four of whom shall be members of business, three of**  
70 **whom shall be from staff of selected departments, one of whom shall be**  
71 **a member of the house of representatives, and one of whom shall be a**  
72 **member of the senate.**

73       **3.** The goals to be pursued by each department under the provisions of  
74 this section shall be construed to overlap with those imposed by federal law or  
75 regulation, if any, shall run concurrently therewith and shall be in addition to the  
76 amount required by federal law only to the extent the percentage set by this  
77 section exceeds those required by federal law or regulations.

**37.760. As used in sections 37.760 to 37.770, the following terms**  
2 **shall mean:**

3       **(1) "Agency", any state department or any division or branch**  
4 **thereof, or any bureau, board, commission, institution, officer, or office**  
5 **of the state of Missouri;**

6       **(2) "Commissioner", the commissioner of administration**  
7 **appointed under section 37.010;**

8       **(3) "Committee", the "Minority Business Enterprise and Women's**  
9 **Business Enterprise Oversight Review Committee" created under**  
10 **section 37.762;**

11       **(4) "Department", the office of administration;**

12       **(5) "Minority business enterprise", the same meaning as such**  
13 **term is defined in section 37.020;**

14       **(6) "Women's business enterprise", the same meaning as such**

15 term is defined in section 37.020.

37.762. 1. There is hereby established the "Minority Business  
2 Enterprise and Women's Business Enterprise Oversight Review  
3 Committee". The committee shall consist of seven members. The  
4 governor shall appoint four members to the committee, two who shall  
5 represent the interests of the minority community in this state, and two  
6 who shall represent the interests of business owners in this state. The  
7 speaker of the house of representatives shall appoint one member of  
8 the committee from the house of representatives. The president pro  
9 tem of the senate shall appoint one member from the senate. The  
10 commissioner of administration shall be an ex officio member of the  
11 committee.

12 2. The committee shall conduct a new study to ensure  
13 participation from socially and economically disadvantaged minority  
14 and women's business enterprises in state contracts for supplies,  
15 services, and construction. Such study shall be completed by December  
16 31, 2012.

37.764. Members of the committee shall not be compensated for  
2 their services, but they shall be reimbursed for actual and necessary  
3 expenses incurred in the performance of their duties. The members of  
4 the committee shall elect one member as chairperson and one member  
5 as vice chairperson who shall serve as chairperson in the absence of  
6 the chairperson. Each member appointed by the governor, speaker of  
7 the house of representatives, or the president pro tem of the senate  
8 shall serve for a term of two years and may be reappointed by the  
9 governor, speaker of the house of representatives, or the president pro  
10 tem of the senate for an additional term of two years. The department  
11 shall provide staff to the committee and aid it in the performance of its  
12 duties.

37.766. The specific duties of the committee shall include, but not  
2 be limited to, the following:

3 (1) Compiling a database of minority business enterprises and  
4 women's business enterprises, certified under section 37.023, that have  
5 participated, directly or indirectly, in contracts for supplies, services,  
6 and construction, with any agency of this state, and making such  
7 database available to all agencies;

8 (2) Making recommendations to agencies for implementation of

9 a system to alert minority business enterprises and women's business  
10 enterprises, certified under section 37.023, of upcoming contracts for  
11 supplies, services, and construction;

12 (3) Establishing requirements for parties to contracts with  
13 agencies for supplies, services, or construction that need  
14 subcontractors to notify potential subcontractors who are minority  
15 business enterprises and women's business enterprises, certified under  
16 section 37.023, of the party's need for a subcontractor. Such  
17 requirements shall include, but need not be limited to:

18 (a) Written notification sent by the entity wishing to contract for  
19 supplies, services, or construction to the certified minority business  
20 enterprise or women's business enterprise's principal place of business;

21 (b) Maintaining records of the notifications sent under  
22 paragraph (a) of this subdivision;

23 (4) Proposing sanctions, which may be adopted by the  
24 department, for parties failing to comply with any requirements  
25 established under subdivision (3) of this section.

37.768. 1. The department shall enforce the requirements  
2 developed by the committee under subdivision (3) of section 37.766.

3 2. The department shall promulgate rules necessary for the  
4 enforcement of such requirements and necessary to aid the committee  
5 in performing its duties under section 37.766. Any rule or portion of a  
6 rule, as that term is defined in section 536.010, that is created under  
7 the authority delegated in this section shall become effective only if it  
8 complies with and is subject to all of the provisions of chapter 536 and,  
9 if applicable, section 536.028. This section and chapter 536 are  
10 nonseverable and if any of the powers vested with the general assembly  
11 pursuant to chapter 536 to review, to delay the effective date, or to  
12 disapprove and annul a rule are subsequently held unconstitutional,  
13 then the grant of rulemaking authority and any rule proposed or  
14 adopted after August 28, 2011, shall be invalid and void.

37.770. Under section 23.253 of the Missouri sunset act:

2 (1) The provisions of the new program authorized under sections  
3 37.760 to 37.768 shall automatically sunset six years after the effective  
4 date of sections 37.760 to 37.768 unless reauthorized by an act of the  
5 general assembly; and

6 (2) If such program is reauthorized, the program authorized

7 under sections 37.760 to 37.768 shall automatically sunset twelve years  
8 after the effective date of the reauthorization of sections 37.760 to  
9 37.768; and

10 (3) This section shall terminate on September first of the  
11 calendar year immediately following the calendar year in which the  
12 program authorized under sections 37.760 to 37.768 is sunset.

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