

SECOND REGULAR SESSION

# SENATE BILL NO. 681

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ELHMANN.

Read 1st time January 8, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2414.02I

## AN ACT

To repeal sections 33.752, 33.756, 67.653, 70.379, 92.418, 92.421, 166.203, 226.900, 226.905, 226.907, 226.910, 238.305, 313.270, 620.605 and 643.310, RSMo 1994, and section 33.753, RSMo Supp. 1997, and to enact in lieu thereof ten new sections relating to racial preferences by state and local governments.

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

Section A. Sections 33.752, 33.756, 67.653, 70.379, 92.418, 92.421, 166.203, 226.900, 226.905, 226.907, 226.910, 238.305, 313.270, 620.605 and 643.310, RSMo 1994, and section 33.753, RSMo Supp. 1997, are repealed and ten new sections enacted in lieu thereof, to be known as sections 33.752, 67.653, 92.418, 92.421, 166.203, 213.060, 238.305, 313.270, 620.605 and 643.310, to read as follows:

33.752. 1. There is hereby established the "Missouri Minority Business Advocacy Commission". The commission shall consist of nine members:

- (1) The director of the department of economic development;
- (2) The commissioner of the office of administration;
- (3) Three minority business persons, appointed by the governor, one of whom shall be designated chairman of the commission;
- (4) Two members of the house of representatives appointed by the speaker of the house of representatives;
- (5) Two members of the senate appointed by the president pro tempore of the senate. No more than two of the three members appointed by the governor may be of the same political party. Appointed members of the commission shall serve four-year terms, except that of the initial

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

appointments made by the governor, one shall be for a two-year term, one shall be for a three-year term and one shall be for a four-year term. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

2. The department of economic development and the office of administration shall develop a plan to increase procurements from minority businesses by all state departments and submit that plan to the governor by July, 1994.

3. Each member appointed by the governor shall receive as compensation a per diem of up to thirty-five dollars for each day devoted to the affairs of the commission and be reimbursed for his actual and necessary expenses incurred in the discharge of his official duties.

4. Each legislative member of the commission is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim committees. The allowances specified in this subsection shall be paid from the amounts appropriated for that purpose.

5. The commission shall meet at least three times each year and at other times as the chairman deems necessary.

6. The duties of the commission shall include, but not be limited to, the following:

- (1) Identify minority businesses in the state;
- (2) Assess the needs of minority businesses;
- (3) Initiate aggressive programs to assist minority businesses in **[obtaining] competing for** state contracts and federal agency procurements;
- (4) Give special publicity to procurement, bidding, and qualifying procedures;
- (5) Include minority businesses on solicitation mailing lists;
- (6) Make recommendations regarding policies, programs and procedures to be implemented by the commissioner of the office of administration;
- (7) Prepare and maintain timely data on minority business qualified to bid on state and federal procurement projects;
- (8) Prepare a review of the commission and the various affected departments of government to be submitted to the governor and the general assembly on March first and October first of each year, evaluating progress made in the areas defined in this subsection;
- (9) Provide a focal point and assist and counsel minority small businesses in their dealings with federal, state and local governments regarding the obtaining of business licenses and permits, including, but not limited to, providing ready access to information regarding government requirements which affect minority small business;
- (10) Analyze current legislation and regulation as it affects minority business for the purpose of determining methods of elimination or simplification of unnecessary regulatory requirements;

(11) Assist minority businesses in obtaining available technical and financial assistance;

(12) Initiate and encourage minority business education programs, including programs in cooperation with various public and private educational institutions;

(13) Receive complaints and recommendations concerning policies and activities of federal, state and local governmental agencies which affect minority small businesses, and develop, in cooperation with the agency involved, proposals for changes in policies or activities to alleviate any unnecessary adverse effects to minority small business.

7. The department of economic development shall furnish administrative support and staff for the effective operation of the commission.

67.653. 1. The authority shall have the following powers:

(1) To acquire by gift, bequest, purchase, lease or sublease from public or private sources and to plan, construct, operate and maintain, or to lease or sublease to or from others for construction, operation and maintenance, convention centers, sports stadiums, field houses, indoor and outdoor convention, recreational, and entertainment facilities and centers, playing fields, parking facilities and other suitable concessions, and all things incidental or necessary to a complex suitable for all types of convention, entertainment and meeting activities and for all types of sports and recreation, either professional or amateur, commercial or private, either upon, above or below the ground, except that no such stadium, complex or facility shall be used, in any fashion, for the purpose of horse racing or dog racing, and any stadium, complex or facility newly constructed by the authority shall be suitable for multiple purposes and designed and constructed to meet National Football League franchise standards and shall be located adjacent to an existing convention facility;

(2) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(3) To maintain an office, and to conduct its meetings at such place or places in the city or in the county as it may designate;

(4) To charge and collect fees and rents for use of the facilities owned or operated by it or leased or subleased from or to others and to deposit any funds received under the provisions of sections 67.650 to 67.658 in a savings or checking account in a bank, credit union, or savings and loan association in this state;

(5) To adopt a common seal;

(6) To contract and to be contracted with, including, but without limitation, the authority to enter into contracts with cities, counties and other political subdivisions and public agencies under sections 70.210 to 70.325, RSMo, and otherwise, and to enter into contracts with other entities, in connection with the acquisition by gift, bequest, purchase, lease or sublease and in connection with the planning, construction, financing, leasing, subleasing, operation and maintenance of any convention or sports facility and for any other lawful purpose, and to sue and to be sued;

(7) To receive for its lawful activities any rentals, contributions or moneys appropriated or otherwise designated for payment to the authority by municipalities, counties, state or other political subdivisions or public agencies or by the federal government or any agency or officer thereof or from any other source;

(8) To disburse funds for its lawful activities and fix salaries and wages of its officers and employees;

(9) To invest any of the authority's funds in such types of investments as shall be determined by a resolution adopted by the commissioners of the authority;

(10) To borrow money for the acquisition, planning, construction, equipping, operation, maintenance, repair, extension and improvement of any facility, or any part or parts thereof, which it has the power to own, lease or operate, and for any other proper corporate purpose, and to issue negotiable notes, bonds, or other instruments in writing as evidence of sums borrowed, as hereinafter provided in this section:

(a) Bonds issued hereunder shall be issued pursuant to a resolution adopted by the commissioners of the authority which shall set out the estimated cost to the authority of the proposed facility or facilities, and shall further set out the amount of bonds to be issued, their purpose or purposes, their date or dates, denomination or denominations, rate or rates of interest, time or times of payment, both of principal and of interest, place or places of payment and all other details in connection therewith. Any such bonds may be subject to such provision for redemption prior to maturity, with or without premium, and at such times and upon such conditions as may be provided by the resolution;

(b) Notwithstanding the provisions of section 108.170, RSMo, such bonds shall bear interest at such rate or rates determined by the authority and shall mature within a period not exceeding fifty years and may be sold at public or private sale for not less than ninety-five percent of the principal amount thereof. Bonds issued by the authority shall possess all of the qualities of negotiable instruments under the laws of this state;

(c) Such bonds may be payable to bearer, may be registered or coupon bonds and if payable to bearer, may contain such registration provisions as to either principal and interest, or principal only, as may be provided in the resolution authorizing the same, which resolution may also provide for the exchange of registered and coupon bonds. Such bonds and any coupons attached thereto shall be signed in such manner and by such officers of the authority as may be provided for by the resolution authorizing the same. The authority may provide for the replacement of any bond which shall become mutilated, destroyed or lost;

(d) Bonds issued by the authority shall be payable as to principal, interest and redemption premium, if any, out of all or any part of the general funds of the authority, including rents, revenues, receipts and income derived and to be derived for the use of any facility or combination of facilities, or any part or parts thereof, acquired, constructed, improved or extended in whole or

in part from the proceeds of such bonds, including but not limited to convention center and stadium rentals, concessions, parking facilities and from funds derived from any other facilities or part or parts thereof, owned or operated by the authority, all or any part of which rents, revenues, receipts and income the authority is authorized to pledge for the payment of said principal, interest, and redemption premium, if any, except that direct appropriations of tax revenues received by the authority pursuant to sections 67.656 and 67.657 or otherwise, other than appropriations for the payment of rent, shall not be pledged for the payment of such bonds. Neither the commissioners of the authority nor any person executing its bonds shall be personally liable on such bonds by reason of the issuance thereof. Bonds issued under the provisions of sections 67.653 to 67.655 shall not constitute a debt, liability, or obligation of this state, or any political subdivision of this state, nor shall any such obligations be a pledge of the faith and credit of this state, but shall be payable solely from the revenues and assets held by the authority. The issuance of bonds under sections 67.653 to 67.655 shall not, directly, indirectly, or contingently, obligate the state of Missouri or any political subdivision thereof, or the authority, to levy any form of taxation therefor or to make any appropriation for their payment. Each obligation or bond issued under sections 67.653 to 67.655 shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same nor the interest on such bond, except from the revenues received by the authority or assets of the authority lawfully pledged therefor, and that neither the faith and credit nor the taxing power of this state or of any political subdivision of this state is pledged to the payment of the principal of or the interest on such obligation or bond. Bonds issued pursuant to this section may be further secured by a mortgage, deed of trust, trust agreement, pledge agreement, assignment or security agreement upon the rents, revenues, receipts and income herein referred to or any part thereof, or upon any leasehold interest or other property owned by the authority, or any part thereof, whether then owned or thereafter acquired, except that direct appropriations of tax revenues received by the authority pursuant to sections 67.656 and 67.657 or otherwise, other than appropriations for the payment of rent, shall not secure such bonds. The proceeds of such bonds shall be disbursed in such manner and under such restrictions as the authority may provide in the resolution authorizing the issuance of such bonds or in any such mortgage, deed of trust, trust agreement, pledge agreement or security agreement;

(e) The authority shall fix and maintain rates and rentals and make and collect charges for the use and services of its interest in the facility or facilities or any part thereof owned or operated by the authority which shall be sufficient to pay the cost of operation and maintenance thereof, to pay the principal of and interest on any such bonds payable from such rates, rentals and charges and to provide funds sufficient to meet all requirements of the resolution by which such bonds have been issued;

(f) The resolution authorizing the issuance of any such bonds may provide for the

allocation of rents, revenues, receipts and income derived and to be derived by the authority from the use of any facility or part thereof, and of the proceeds received pursuant to sections 67.656 and 67.657, into such separate accounts as shall be deemed to be advisable to assure the proper operation and maintenance of any facility or part thereof and the prompt payment of any bonds issued to finance all or any part of the costs thereof. Such accounts may include reserve accounts necessary for the proper operation and maintenance of any such facility or any part thereof, and for the payment of any such bonds. Such resolution may include such other covenants and agreements by the authority as in its judgment are advisable or necessary properly to secure the payment of such bonds;

(g) The authority may issue negotiable refunding bonds for the purpose of refunding, extending or unifying the whole or any part of such bonds then outstanding, or any bonds, notes or other obligations issued by any other public agency, public body or political subdivision in connection with any facilities to be acquired, leased or subleased by the authority, which refunding bonds shall not exceed the amount necessary to refund the principal of the outstanding bonds to be refunded and the accrued interest thereon to the date of such refunding, together with any redemption premium, amounts necessary to establish reserve and escrow funds and all costs and expenses incurred in connection with the refunding. The authority may provide for the payment of interest on such refunding bonds at a rate in excess of the bonds to be refunded;

(h) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery;

(i) The authority is hereby declared to be performing a public function and bonds of the authority are declared to be issued for an essential public and governmental purpose and, accordingly, interest thereon and income therefrom shall be exempt from income taxation by the state of Missouri;

(11) To condemn any and all rights or property of any kind or character, necessary for the purposes of the authority, in the manner provided in chapter 523, RSMo, except that no property now or hereafter vested in or held by the state, the county or the city shall be taken by the authority without the authorization or consent of such party; provided however, that the authority shall provide relocation benefits to all individuals and businesses, occupying said property, in the same manner as such relocation benefits are provided pursuant to the federal Relocation Assistance Act;

(12) To perform all other necessary and incidental functions, and to exercise such additional powers as shall be conferred by the general assembly or by act of Congress.

2. The authority shall proceed to carry out its duties, functions and powers in accordance with sections 67.650 to 67.658, and the authority is vested with all necessary and appropriate

powers not inconsistent with the constitution or the laws of the United States to effectuate the same, except the power to levy taxes or assessments. In no event shall the state be liable for any deficiency or indebtedness incurred by the authority.

3. [The authority shall grant or award at least fifteen percent of all contracts, employment opportunities, professional services and all other special contracts to persons who are members of a racial minority group, as defined in section 33.750, RSMo.

4.] The authority and any city, county, other political subdivision or public agency obtaining funds pursuant to the provisions of this chapter shall be subject to the provisions of sections 34.073 and 34.076, RSMo.

92.418. 1. All moneys received by a city imposing a sales tax under the provisions of sections 92.400 to 92.421, less two percent for the cost of handling, which shall be deposited in the city's general fund, shall be deposited by the city treasurer, or other city officer authorized by ordinance, in a special fund to be known as the "Public Mass Transportation Trust Fund" for the primary benefit of a public mass transportation system operating within the city, provided, however, that not more than six and one-half percent of the moneys deposited in the public mass transportation trust fund may be appropriated and expended by the city for motor pool operations as may be required by law.

2. The moneys in the public mass transportation trust fund accumulated by the city beyond the end of the city's fiscal year in which such funds were collected, and not needed by the city to meet its contractual obligations to an interstate transportation authority or for motor pool operations, may be appropriated and paid directly to such interstate transportation authority to be used by the interstate transportation authority for its general purposes in providing a public mass transportation system within an interstate transportation district, or the city may appropriate and expend such excess funds for the purposes set forth in section 30(a)(2), of article IV, of the Constitution of Missouri, as amended.

3. A city may designate by contract from time to time with an interstate transportation authority to provide specific services, frequency of service, to underwrite a certain fare structure or for any purpose consistent with providing a sound public mass transportation system to serve the city, and the city shall appropriate and pay directly to the interstate transportation authority from the public mass transportation trust fund the amounts of money that the city finds is sufficient to enable the interstate transportation authority to perform its contractual obligations to the city, or a city may appropriate and pay all of the funds on deposit in a public mass transportation trust fund directly to an interstate transportation authority to be used by such interstate transportation authority for its general purposes in providing a public mass transportation system within an interstate transportation district.

4. Any provisions of sections 92.400 to 92.421 to the contrary notwithstanding, seven and one-half percent of the proceeds of any sales tax imposed under sections 92.400 to 92.421 that are

appropriated and paid by a city to an interstate transportation authority shall be used only by the city and the interstate transportation authority for the purchase of new equipment, for the construction of public mass transportation facilities or for any other capital expenditures or improvements to the property of the interstate transportation authority, or to pay the interest or principal payments or to satisfy sinking fund requirements on any negotiable notes or bonds or other instruments in writing issued by the interstate transportation authority for any of the above purposes.

5. Ninety-two and one-half percent of the proceeds of any sales tax imposed under sections 92.400 to 92.421 that are appropriated and paid by a city to an interstate transportation authority shall be used to supply funds to be applied to the expenses of the organization and costs of operation of the public mass transportation system and the facilities thereof, and may be used to supply additional funds for capital expenditures as set forth in subsection 4 of this section.

6. Transportation authorities operating a public mass transportation system under sections 92.400 to 92.421 may provide for interior and exterior advertising on each vehicle for mass transportation purposes.

[7. Transportation authorities operating a public mass transportation system under sections 92.400 to 92.421 shall set and attain goals for the inclusion of minority business enterprises as defined in section 33.750, RSMo, for contracts in operating motor pools, construction, repairs and related projects for the public mass transportation system. The attainment of such goals on these contracts shall be based on the availability of minority-owned businesses operating within the city that perform the services for which such contract is to be awarded.]

92.421. 1. Not later than the tenth day of each month, the director of revenue shall distribute all moneys due the interstate transportation authority as determined by the director of revenue pursuant to section 92.402 received by him from proceeds of the tax authorized in sections 92.400 to 92.421 in the previous month, less one percent for the cost of collection which shall be deposited in the state general revenue fund, to the interstate transportation authority for the city in which the tax was levied. The director of revenue may authorize the state treasurer to make refunds for erroneous payments and overpayments, and may redeem any dishonored checks and drafts used in payment of the tax.

2. The interstate transportation authority shall use the proceeds of the tax solely for capital improvements for the system.

[3. The interstate transportation authority shall within ninety days after August 28, 1989, promulgate rules and regulations for a minority/disadvantaged and women business enterprise program for the purchase of goods and services and construction of capital improvements for the authority.]

166.203. 1. There is hereby created the "Missouri Access to Higher Education Trust",



which shall be a body corporate and politic. The trust shall be located within the state office of administration, but shall exercise its prescribed powers, duties, and functions independently. The trust shall be governed by a board of directors which shall consist of ten members with knowledge, skill, and experience in the academic, business, or financial field appointed by the governor, by and with the advice and consent of the senate. Not more than three members of the board shall be, during their term of office on the board, either officials, appointees, or employees of this state[, except that at least one member shall be appointed from a minority group]. Of the remaining seven members appointed by the governor, one shall be appointed from a nominee of the speaker of the house of representatives, one shall be appointed from a nominee of the president pro tem of the senate, one shall be a president of a public four-year college or university, one shall be a president or chancellor of a public community college, one shall represent the interests of Missouri independent degree-granting colleges and universities, and one shall be the commissioner of higher education. [Of these remaining seven members, at least one shall be a member of a minority group.] Members shall be appointed for a term of three years; except that, of the members first appointed, three shall be appointed for a term of one year, three shall be appointed for a term of two years, and four shall be appointed for a term of three years. A member shall serve until a successor is appointed and qualified, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The governor shall designate one member as chairperson. The governor shall also designate one member as the president and chief executive officer of the trust and one member as the vice president of the trust. Members of the board, other than the president and vice president if they are not otherwise employees of the state, shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

2. The board may delegate to its president, vice president, or other member such functions and authority as the board considers necessary or appropriate. These functions may include, but are not limited to, the oversight and supervision of employees of the trust.

3. A majority of the members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board, or the exercise of a power or function of the trust, notwithstanding the existence of one or more vacancies. Voting upon action taken by the board shall be conducted by majority vote of the members present at a meeting of the board, and, if authorized by the bylaws of the board and when a quorum is present in person at the meeting, by use of amplified telephonic equipment. The board shall meet at the call of the chair and as may be provided in the bylaws of the trust. Meetings of the board may be held anywhere within the state.

**213.060. 1. Notwithstanding any law, anything having effect of law, executive order, policy or rule to the contrary, neither the state nor any of its political subdivisions, including publicly funded colleges or universities, or agents shall use race,**

**sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group of persons in the state's system of public employment, public education or public contracting. Any executive order, policy or rule which does is hereby declared to be null and void. No executive order, policy or rule shall be adopted by the state or any of its political subdivisions, including publicly funded colleges or universities, or agents, shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group of persons in the state's system of public employment, public education or public contracting, unless the state or any of its political subdivisions or agents has made a finding, which shall be included in the executive order, policy or rule, and which shall be supported by clear and convincing evidence that:**

**(1) Specific, pervasive and systematic discrimination has occurred in the past and will continue to occur in the future;**

**(2) The executive order, policy or rule is a narrowly tailored remedial action that furthers a compelling governmental interest; and**

**(3) The remedial action shall sunset when the discrimination is eliminated but no later than two years after implementation.**

**2. Nothing in this section shall be interpreted as prohibiting state action that is necessary to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.**

**3. Anyone adversely affected by any law, executive order or rule in violation of this act, or any Missouri taxpayer, shall have standing to bring a suit to enforce the provisions of this act and, if successful in whole or in part, against the state, its political subdivisions or agents shall be entitled to an award of costs of suit, and reasonable attorneys fees. Nothing in this section shall require the exhaustion of any administrative remedies.**

238.305. 1. The general assembly declares that:

(1) The present and prospective traffic congestion and limited roadways in many areas of this state, and the limited availability of state funds, require as a public purpose the promotion and development of public transportation facilities and systems by new and alternative means;

(2) The creation of transportation corporations by private parties in cooperation with the commission is essential to the continued economic growth of this state, is in the public interest, and will promote the health, safety and general welfare of the citizens of this state by securing for them expanded and improved transportation facilities and systems;

(3) The transportation corporations created under sections 238.300 to 238.360 will perform an essential function by acting to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;

(4) The transportation corporations created under sections 238.300 to 238.360 will perform many functions normally undertaken by the commission and its staff, and thus will reduce the burdens and demands on limited funds available to the commission, thereby increasing the effectiveness and impact of those funds available to the commission;

(5) The transportation corporations created under sections 238.300 to 238.360 will act in promoting and developing public transportation facilities and systems and in promoting economic development in this state, and will not act as the agent or instrumentality of any private interests even though many private interests may be benefitted by the transportation corporations, as will the general public. [The transportation corporations created under sections 238.300 to 238.360 shall periodically make a showing to the state highways and transportation department of a good faith effort of development and implementation of a women and minority employment and business plan. Only after such a showing of a good faith effort may the transportation corporations created under sections 238.300 to 238.360 waive the general policy of women and minority employment and business plan and involvement. If such policy is waived, the transportation corporations created under sections 238.300 to 238.360 shall make a showing of a good faith effort of development and implementation of a women and minority employment and business plan every three months until such policy is again in effect.]

2. Sections 238.300 to 238.360 shall be liberally construed in conformance with the legislative findings and purposes set forth in this section.

313.270. 1. The director, pursuant to rules and regulations issued by the commission, may directly purchase or lease such goods or services as are necessary for effectuating the purposes of sections 313.200 to 313.350, including procurement which integrate functions such as lottery game design, supply of goods and services, and advertising. The lottery commission by approved rule may purchase goods made in the state of Missouri to be given away as prizes within the provisions of section 313.321. Contracts shall be awarded to lottery contractors or lottery vendors on the basis of lowest and best bid on an evaluated basis in order to maximize revenues to the lottery fund. The director may also utilize state purchasing procedures. [The director shall award at least ten percent of the aggregate dollar amount of all contracts to provide goods and services to the lottery to minority business enterprises as defined by the office of administration and shall award at least five percent of the aggregate dollar amount of all contracts to provide goods and services to the lottery to women business enterprises as defined by the office of administration.] No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission.

2. [Any contract awarded to any lottery contractor or vendor shall provide that such contractor or vendor shall award a minimum of ten percent of his subcontracted business to minority business enterprises as defined by the office of administration and shall award a minimum of five percent of his subcontracted business to women business enterprises as defined

by the office of administration. This section shall not apply to multistate lottery.

3.] Any lottery vendor which enters into a contract to supply lottery materials, services or equipment for use in the operation of the state lottery shall first disclose such information as the commission may require, by rule and regulation, concerning the selection of lottery vendors.

[4.] **3.** The costs of any investigation into the background of the applicant seeking a contract shall be assessed against the applicant and shall be paid by the applicant at the time of billing by the state.

[5.] **4.** Performance bonds shall be posted by each contractor with the commission with a surety acceptable to the commission in an amount as may be required by the commission, but not to exceed the expected total value of the contract. The contract of any lottery contractor who does not comply with such requirements may be terminated by the commission. The commission may terminate the contract of any lottery vendor who:

- (1) Is convicted of any felony;
- (2) Is convicted of any gambling-related offense;
- (3) Is convicted of any crime involving fraud or misrepresentation;
- (4) Fails to comply with the rules and regulations of the commission existing at the time the contract was entered into; or
- (5) Fails to periodically update any disclosure requirements.

[6. The provisions in this section requiring that certain percentages of lottery contracts and subcontracts be awarded to businesses owned and controlled by women or ethnic and racial minorities shall expire on January 1, 2000.]

620.605. 1. Development programs enacted by the general assembly, to be overseen by the department of economic development, shall be administered in the following order of priority:

- (1) Assist existing businesses and employers to ensure their continued existence and maintain the level of existing jobs;
- (2) Assist existing businesses and employers in job creation and expansion;
- (3) Provide assistance to Missouri communities in attracting new employers;
- (4) Foster the development of new businesses in the state of Missouri; **and**
- (5) Assist existing businesses and encourage new businesses which promote resource recovery, waste minimization and recycling; and

(6) Assist existing minority businesses to ensure their continued [existence] **competitiveness** and encourage new minority business **to be more competitive** in job creation and expansion.

2. In determining whether or not a proposed economic development project shall be assisted by the department of economic development or the Missouri industrial development board, or its successor entity, the department and the board shall consider the following factors:

- (1) The ratio of state dollars needed for a project to the number of jobs created or saved;

- (2) The ratio of the capital investment of a business to the amount of state money requested by the borrower;
- (3) The potential of the business to export goods and services outside the state in order to increase the overall wealth of the state;
- (4) The ratio of economic benefits to public costs;
- (5) The ratio of state dollars to private dollars invested in the project;
- (6) The likelihood of the project to contribute to the growth of existing businesses in the state or to encourage the development of new businesses in the state;
- (7) The protection of the state's fiscal interests;
- (8) The extent to which the project builds on existing strengths and resources;
- (9) The potential impact of the project on the state's natural resources;
- (10) The potential negative economic impact on other Missouri businesses which do not receive such assistance;
- (11) The likelihood that a project may proceed without such assistance; and
- (12) The potential impact of the project on the revenues of local governments and other political subdivisions where such project will be located.

643.310. 1. The commission may, by rule, establish a motor vehicle emissions inspection program under sections 643.300 to 643.355 for any portion of a nonattainment area located within the area described in subsection 1 of section 643.305, except for any portion of the nonattainment area which is located in a county of the first classification without a charter form of government with a population of less than one hundred thousand inhabitants according to the most recent decennial census, if the commission determines that such motor vehicle emissions inspection program is necessary in that area to comply with the requirements of subsection 1 of section 643.305, except that no motor vehicle emission inspection program shall be established under this section in any area for which the sale or dispensing of conventional gasoline for use in motor vehicles is prohibited under the federal Clean Air Act, as amended, 42 U.S.C. 7545. The commission shall ensure that, for each nonattainment area, the state implementation plan established under subsection 1 of section 643.305 incorporates and receives all applicable credits allowed by the United States Environmental Protection Agency for emission reduction programs in other nonattainment areas of like designation in other states. The commission shall ensure that emission reduction amounts established under subsection 2 of section 643.305 shall be consistent with and not exceed the emissions reduction amounts required by the United States Environmental Protection Agency for other nonattainment areas of like designation in other states. No motor vehicle emissions inspection program shall be required to comply with subsection 1 of section 643.305 unless the plan established thereunder takes full advantage of any changes in requirements or any agreements made or entered into by the United States Environmental Protection Agency and any entity or entities on behalf of a nonattainment area concerning

compliance with National Ambient Air Quality Standards of the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and the regulations promulgated thereunder. The air conservation commission shall request and it shall be the duty of the attorney general to bring, in a court of competent jurisdiction, an action challenging the authority of the United States Environmental Protection Agency to impose sanctions for failure to attain National Ambient Air Quality Standards and failure to provide for required emission reductions under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. The action shall seek to define the required emission reductions and the credits allowed for current and planned emission reductions measures. The air conservation commission shall request and it shall be the duty of the attorney general to bring an action to obtain injunctive relief to enjoin and restrain the imposition of sanctions on the state of Missouri under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq., until all actions initiated under this section have been decided. Provisions of section 307.366, RSMo, to the contrary notwithstanding, the requirements of sections 643.300 to 643.355 shall apply to those areas designated by the commission under this section in lieu of the provisions of section 307.366, RSMo.

2. The department shall contract with one or more persons to provide any motor vehicle emissions inspection program established under sections 643.300 to 643.355.

3. The department may purchase the motor vehicle emissions inspection facilities pursuant to appropriations specifically provided for that purpose. The department may lease, sublease or license the facilities to the contractor or contractors for the purpose of fulfilling the obligations of the contract for the motor vehicle emissions inspection program.

4. The inspection program shall satisfy the following criteria:

(1) There shall be an adequate number of stations to ensure that no more than twenty percent of all persons residing in an affected nonattainment area reside farther than five miles from the nearest inspection station, and consideration shall be given to employment, locations and commuting patterns when selecting the locations of the stations;

(2) There shall be an adequate number of inspection lanes at each facility so that no more than five percent of all persons having an inspection are required to wait more than fifteen minutes before the inspection begins;

(3) The days and daily hours of operation shall include at least those hours specified by the department, which shall include, at a minimum, twelve continuous hours of operation on all weekdays excepting federal holidays, and six continuous hours of operation on all Saturdays excepting federal holidays;

(4) The emissions inspection program shall include a simulated on-road emissions inspection component, including pressure and purge tests, which satisfies the requirements established by regulation of the United States Environmental Protection Agency and may include a visual inspection component;

(5) The inspection stations shall be test-only stations and shall not offer motor vehicle emissions repairs, parts or services of any kind;

(6) No person operating or employed by an emissions inspection station shall repair or maintain motor vehicle emission systems or pollution control devices for compensation of any kind.

5. [The commission, the department of economic development and the office of administration shall, in cooperation with the minority business advocacy commission, select the contractor or contractors to provide an inspection program which satisfies the minimum requirements of this section in accordance with the requirements of section 33.752, RSMo, and chapter 34, RSMo. The commission, the office of administration and the department of economic development, in cooperation with the minority business advocacy commission shall ensure adequate minority business participation in the selection of the contractor or contractors to provide an inspection program under this section.] The commission, the office of administration and the department of economic development shall ensure adequate participation of Missouri businesses in the selection of the contractor or contractors to provide an inspection program under this section.

6. With approval of the commission and under rules adopted by the commission, an organization whose members are motor vehicle dealers or leasing companies may establish one or more additional emissions inspection facilities, which may be either mobile or stationary, to be used solely to inspect motor vehicles owned and held for sale or lease by the members of the organization. With approval of the commission and under rules adopted by the commission, any person operating a fleet of five hundred or more motor vehicles may establish one or more additional emissions inspection facilities, which may be either mobile or stationary, to be used solely to inspect motor vehicles owned or leased and operated by the person establishing the facility. The inspections performed in facilities established under this subsection shall be performed by a contractor selected by the commission under this section and the contractor performing such inspections shall be responsible solely to the department and shall satisfy all applicable requirements of sections 643.300 to 643.355.

7. Any person who owns Missouri analyzer system emission inspection equipment as defined by rule, used to provide emissions inspections under section 307.366, RSMo, at a facility located in an area in which an emissions inspection program has been established under sections 643.300 to 643.355 may, within twelve months of the implementation of an emissions inspection program under sections 643.300 to 643.355, sell such equipment, to the department of natural resources at current market value as established by an independent appraisal provided that the equipment is fully functional and has been maintained according to all applicable manufacturer's specifications and procedures. The department shall purchase such equipment using funds appropriated for that purpose from the Missouri air emission reduction fund. Any person who, prior to January 1, 1992, contracted to lease or lease purchase, or purchased by borrowing a

portion of the funds secured by a chattel mortgage, Missouri Analyzer System emission inspection equipment used to provide emissions inspections under section 307.366, RSMo, at a facility located in an area in which an emissions inspection program has been established under sections 643.300 to 643.355, and has made all payments required under the contract, may, within twelve months of the implementation of an emissions inspection program under sections 643.300 to 643.355, request the department of natural resources to take possession of such equipment and assume all payment obligations owed on such equipment which obligations are not in excess of one hundred and twenty-five percent of the current market value as established by an independent appraisal, provided that the equipment is fully functional and has been maintained according to all applicable manufacturer's specifications and procedures. The department shall take possession of such equipment and pay such obligations using funds appropriated for that purpose from the Missouri air emission reduction fund.

[33.753. The Missouri minority business advocacy commission, as established pursuant to section 33.752 shall, in addition to providing the governor with a plan to increase procurement from minority businesses by all state departments as provided in subsection 2 of section 33.752, also provide to the general assembly the findings of such plan and provide details of any recommended legislation that may be needed to carry out the provisions of the plan. The commission shall submit the plan and recommended legislation to the general assembly within six months of delivery of the original plan to the governor.]

[33.756. The minority business development commission shall consult with the tourism commission in establishing rules and regulations for African-American and other minority business participation.]

[70.379. The bi-state development agency shall set and attain goals for the inclusion of fifteen percent minority business enterprises, as defined in section 33.750, RSMo, and five percent women business enterprises in all contracts for the operation of bus and rail services. The attainment of such goals shall be based upon the availability of minority-owned businesses operating within the urban area in Missouri that perform the services for which such contract is to be awarded. This section shall become null and void when the agency meets the goals for two consecutive years.]

[226.900. The commission shall develop specific goals for minority employment and training and the use of minority-owned construction companies. The commission shall annually provide a report to the general assembly on or before June fifteenth of each year. The report shall, at a minimum, provide detailed information which indicates the progress made in achievement of the specific goals established under this section.]

[226.905. A minimum of ten percent of all contracts entered into by the Missouri highways and transportation commission in the design and construction of projects



financed in whole or in part with federal funds shall be entered into with minority-owned construction companies or businesses. If there are not a sufficient number of qualified minority business enterprises in a geographic area to meet the ten percent goal established in this section, then the contract recipient shall make a good faith effort to solicit and use subcontracts with minority business enterprises located within reasonable proximity to the geographic area in order to meet the ten percent goal established in this section or increase minority business enterprise participation in other projects.]

[226.907. 1. The provisions of sections 226.900 and 226.905 shall not apply to any contracts necessitated by damage inflicted in the flood of 1993.

2. If the report required by section 226.900 certifies that the ten percent goal has been achieved, the provisions of section 226.905 and this section dealing with minority-owned construction companies shall become null and void.]

[226.910. If the United States Secretary of Transportation determines that sections 226.900 to 226.907 have the effect of placing the state of Missouri in noncompliance with any federal constitutional, statutory or regulatory provision that would result in the loss of any federal aid funds to the Missouri highways and transportation commission, then sections 226.900 to 226.907 shall be null and void.]

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