

FIRST REGULAR SESSION

# HOUSE BILL NO. 136

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HUGHES (Sponsor), CURLS AND LeVOTA (Co-sponsors).

0494L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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Section A. Section 37.020, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 37.020, 37.760, 37.762, 37.764, 37.766, 37.768, and 37.770, to read as follows: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

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

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

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

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

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

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

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 (4) "Socially and economically disadvantaged individuals", individuals, regardless of  
17 gender, who have been subjected to racial, ethnic, or sexual prejudice or cultural bias because  
18 of their identity as a member of a group without regard to their individual qualities and whose  
19 ability to compete in the free enterprise system has been impaired due to diminished capital and  
20 credit opportunities as compared to others in the same business area. In determining the degree  
21 of diminished credit and capital opportunities the office of administration shall consider, but not  
22 be limited to, the assets and net worth of such individual;

23 (5) "Socially and economically disadvantaged small business concern", any small  
24 business concern:

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

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

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

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

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

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

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

51           3. The office of administration, in consultation with each department, shall  
52 establish and implement a plan to increase and maintain the participation of certified  
53 socially and economically disadvantaged small business concerns or minority business  
54 enterprises, directly or indirectly, in contracts for supplies, services, and construction  
55 contracts, consistent with goals determined after an appropriate study conducted to  
56 determine the availability of socially and economically disadvantaged small business  
57 concerns and minority business enterprises in the marketplace. Such study shall be  
58 completed by December 31, 2011. The commissioner of administration shall appoint an  
59 oversight review committee to oversee and review the results of such study. The committee  
60 shall be composed of nine members, four of whom shall be members of business, three of  
61 whom shall be from staff of selected departments, one of whom shall be a member of the  
62 house of representatives, and one of whom shall be a member of the senate.

63           4. The goals to be pursued by each department under the provisions of this section shall  
64 be construed to overlap with those imposed by federal law or regulation, if any, shall run  
65 concurrently therewith and shall be in addition to the amount required by federal law only to the  
66 extent the percentage set by this section exceeds those required by federal law or regulations.

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

- 2           (1) "Agency", any state department or any division or branch thereof, or any  
3 bureau, board, commission, institution, officer or office of the state of Missouri;
- 4           (2) "Commissioner", the commissioner of administration appointed under section  
5 37.010;
- 6           (3) "Committee", the "Minority Business Enterprise and Women's Business  
7 Enterprise Oversight Review Committee" created under section 37.762;
- 8           (4) "Department", the office of administration;
- 9           (5) "Minority business enterprise", the same meaning as such term is defined in  
10 section 37.020;
- 11           (6) "Women's business enterprise", the same meaning as such term is defined in  
12 section 37.020.

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

9           **2. The committee shall conduct a new study to ensure participation from socially**  
10 **and economically disadvantaged minority or women's business enterprises. Such study**  
11 **shall be completed by December 31, 2010.**

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

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

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

7           **(2) Making recommendations to agencies for implementation of a system to alert**  
8 **minority business enterprises and women's business enterprises, certified under section**  
9 **37.023, of upcoming contracts for supplies, services, and construction;**

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

15           **(a) Written notification sent to the certified minority business enterprise or**  
16 **women's business enterprise's principal place of business;**

17           **(b) Maintaining records of the notifications sent under paragraph (a) of this**  
18 **subdivision;**

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

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

3           **2. The department shall promulgate rules necessary for the enforcement of such**  
4 **requirements and necessary to aid the committee in performing its duties under section**

5 **37.766.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
6 is created under the authority delegated in this section shall become effective only if it  
7 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if  
8 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
9 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,  
10 to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
11 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
12 adopted after August 28, 2009, shall be invalid and void.

**37.770.** Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

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

5 (2) If such program is reauthorized, the program authorized under sections 37.760  
6 to 37.768 shall automatically sunset twelve years after the effective date of the  
7 reauthorization of sections 37.760 to 37.768; and

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

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