

SECOND REGULAR SESSION

HOUSE BILL NO. 1406

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ELLINGTON (Sponsor), PETERS, GARDNER,
MIMS AND BUTLER (Co-sponsors).

4534L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 37.020, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 37.020, 37.760, 37.762, 37.764, 37.766, 37.768, and 37.770, to read as follows: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.] **The office of
51 administration, in consultation with each department, shall establish and implement a plan**

52 to increase and maintain the participation of certified socially and economically
53 disadvantaged small business concerns or minority business enterprises, directly or
54 indirectly, in contracts for supplies, services, and construction contracts, consistent with
55 goals determined after an appropriate study conducted to determine the availability of
56 socially and economically disadvantaged small business concerns and minority business
57 enterprises in the marketplace. Such study shall be completed by December 31, 2016. The
58 commissioner of administration shall appoint an oversight review committee to oversee and
59 review the results of such study. The committee shall be composed of nine members, four
60 of whom shall be members of business, three of whom shall be from staff of selected
61 departments, one of whom shall be a member of the house of representatives, and one of
62 whom shall be a member of the senate.

63 3. 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, 2015.**

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 to implement the provisions of this**
4 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**

5 created under the authority delegated in this section shall become effective only if it
6 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
7 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
8 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
9 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
10 grant of rulemaking authority and any rule proposed or adopted after August 28, 2014,
11 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 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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