

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MISSOURI ROUNDTABLE FOR LIFE, INC.,)
FREDERIC N. SAUER, MISSOURI RIGHT)
TO LIFE, and PAM FICHTER,)

Plaintiffs,)

vs.)

STATE of MISSOURI,)

Serve:)

Chris Koster)
Attorney General)
Supreme Court Building)
207 W. High Street)
Jefferson City, MO 65101)

and)

JEREMIAH W. (JAY) NIXON, in his official)
capacity as Governor of Missouri,)

Serve at:)
Office of Governor)
State Capitol, Room 216)
Jefferson City, Missouri 65101)

and)

CLINT ZWEIFEL, in his official capacity as)
Missouri Treasurer,)

Serve at:)
Office of the Treasurer)
State Capitol, Room 229)
Jefferson City, Missouri 65101)

and)

OFFICE OF TREASURER,)

Serve at:)
Office of the Treasurer)
State Capitol, Room 229)

Cause No. _____

Division _____

Jefferson City, Missouri 65101)

and)

KELVIN SIMMONS, in his official capacity as)
Commissioner of Administration,)

Serve at:)
Office of Administration Commissioner)
301 W. High Street)
Jefferson City, Missouri 65101)

and)

OFFICE OF ADMINISTRATION,)

Serve at:)
Office of Administration)
301 W. High Street)
Jefferson City, Missouri 65101)

and)

DAVID KERR, in his official)
capacity as Director of Economic Development,)

Serve at:)
Department of Economic Development)
301 W. High Street)
Jefferson City, Missouri 65101)

and)

DEPARTMENT OF ECONOMIC)
DEVELOPMENT,)

Serve at:)
Department of Economic Development)
301 W. High Street)
Jefferson City, Missouri 65101)

and)

ALANA M. BARRAGÁN-SCOTT, in her official)
capacity as Director of Revenue,)

3. SB No. 8 failed to pass in the first extraordinary session of the first regular session of the 96th General Assembly and that extraordinary session has ended. The condition set forth in Section B of SB No. 7 therefore cannot ever be met.

4. Plaintiffs, as Missouri taxpayers and as organizations including Missouri taxpayers as their officers and members, will suffer harm if Section A of SB No. 7 is implemented and taxpayer funds are disbursed before these controversies are resolved by the Court.

5. Despite his constitutional duty to uphold the laws of Missouri, the Governor has stated his intention to implement, and to have the other Defendants implement, the void Section A of SB No. 7.

Parties

6. Plaintiff Missouri Roundtable for Life, Inc. ("Missouri Roundtable") is a Missouri non-profit corporation in good standing. Missouri Roundtable's officer, directors, and members are Missouri residents and taxpayers.

7. Plaintiff Fred N. Sauer ("Sauer") is a Missouri resident and taxpayer and is the President and a Director of Missouri Roundtable.

8. Plaintiff Missouri Right to Life is a Missouri non-profit corporation in good standing. Various officers, directors, and members of Missouri Right to Life are Missouri residents and taxpayers.

9. Plaintiff Pam Fichter ("Fichter") is a Missouri resident and taxpayer and is the President and a Director of Missouri Right to Life.

10. Defendant State of Missouri (the "State") is a body politic organized and existing under the Missouri Constitution and the United States Constitution.

11. Defendant Jeremiah W. (Jay) Nixon is the duly elected Governor of the State of Missouri (“Governor”) and is sued in his capacity as such.

12. Defendant Clint Zweifel is the duly elected Treasurer of the State of Missouri (“Treasurer”) and is sued in his capacity as such.

13. Defendant Office of Treasurer (“Office of Treasurer”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, §15. The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Treasurer and the Office of Treasurer.

14. Defendant Kelvin Simmons is the duly appointed Commissioner of Administration of the State of Missouri (“Commissioner of Administration”) and is sued in his capacity as such.

15. Defendant Office of Administration (“Office of Administration”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, § 50. The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Commissioner of Administration and the Office of Administration.

16. Defendant David Kerr is Director of Economic Development of the State of Missouri (“Director of Economic Development”) and is sued in his capacity as such.

17. Defendant Department of Economic Development (“DED”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, § 36(a). The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Director of Economic Development and the DED.

18. Defendant Alana M. Barragán-Scott is Director of Revenue of the State of Missouri (“Director of Revenue”) and is sued in her capacity as such.

19. Defendant Department of Revenue (“DOR”) is an Executive Office of the State of Missouri established and existing under Missouri Constitution Art. IV, § 22. The legislation at issue in this Petition purports to impose, directly or indirectly, duties upon the Director of Revenue and the DOR.

Plaintiffs’ Standing as Associations and as Taxpayers

20. Plaintiff Missouri Roundtable has standing to assert the interests of its members because its members, who are Missouri taxpayers, would have standing to institute this action; the interests that Missouri Roundtable seeks to protect are germane to its purpose; and neither the asserted claims nor the requested relief requires the participation of the individual members.

21. Plaintiff Sauer has standing as a resident and taxpayer of Missouri and as an officer and director of Plaintiff Missouri Roundtable. Sauer challenges expenditures of public funds and the potential increased levy in taxes that may result if this controversy is not resolved.

22. Plaintiff Missouri Right to Life has standing to assert the interests of its members because its members, who are Missouri taxpayers, would have standing to institute this action; the interests that Missouri Right to Life seeks to protect are germane to its purpose; and neither the asserted claims nor the requested relief requires the participation of the individual members.

23. Plaintiff Fichter has standing as a resident and taxpayer of Missouri and as an officer and director of Plaintiff Missouri Right to Life. Fichter challenges

expenditures of public funds and the potential increased levy in taxes that may result if this controversy is not resolved.

General Allegations

24. Plaintiffs' rights, status, or other legal relations are affected by Section A of SB No. 7 and by the actions of the Governor and the remaining Defendants to implement Section A of SB No. 7, as more fully set forth in this Petition.

25. An actual controversy, ripe for adjudication, currently exists between Plaintiffs and Defendants as to whether Section A of SB No. 7 is void and a legal nullity. Plaintiffs lack an adequate remedy at law.

26. Plaintiffs therefore seek a declaratory judgment under Rule 87 of the Missouri Rules of Civil Procedure and Mo. Rev. Stat. §§ 527.010, *et seq.*, to terminate this controversy and remove uncertainty.

27. In its first extraordinary session, the 96th General Assembly of Missouri passed SB No. 7, which purports to authorize the expenditure of public funds. An accurate copy of the Senate Substitute for the Senate Committee Substitute for Senate Bill No. 7, as Truly Agreed to and Finally Passed (i.e., SB No. 7 as defined in this Petition), is attached hereto as **Exhibit 1**.

28. Section B of SB No. 7 contains the following contingency clause:

Section A of this act relating to science and innovation *shall not become effective except upon the passage and approval by signature of the governor only of senate bill no. 8* relating to taxation and enacted during the first extraordinary session of first regular session of the ninety-sixth general assembly.

(SB No. 7 at § B) (emphasis added).

29. SB No. 8 failed to pass in the first extraordinary session of the first regular session of the 96th General Assembly and that extraordinary session has ended. The condition in Section B of SB No. 7 therefore cannot ever be met.

30. Further, the history of SB No. 7 and its various predecessor bills in the 2011 legislative session demonstrates that neither SB No. 7 nor any of its predecessor bills would have passed *but for* the addition of the contingency clause. For example, the predecessors to SB No. 7 in the 2011 regular session did not contain such contingency clauses and each of those bills failed to pass or died at various stages of the legislative process. Further, both the “Introduced” version and “Senate Committee Substitute” version of SB No. 7 did not contain a “Section B” contingency clause. The “Section B” clause was placed in SB No. 7 by means of the Senate Substitute for the Senate Committee Substitute. Only after adding the contingency clause did the Senate Substitute for the Senate Committee Substitute of SB No. 7, as amended, garner enough votes to pass both the House and Senate.

31. The General Assembly delivered SB No. 7 to the Governor on or about October 6, 2011.

32. On or about October 21, 2011, the Governor signed SB No. 7.

33. Notwithstanding the failure of the contingency in Section B of SB No. 7 to occur, and the impossibility of that contingency ever occurring in the future, and notwithstanding his constitutional duty to “take care that the laws are distributed and faithfully executed,” Mo. Const. Art. IV, § 2, on or about October 21, 2011, the Governor issued a press release stating that “Senate Bill 7 contains a clause that requires its effective date be contingent on the passage of an unrelated bill. Contingency clauses

contained in legislation have been voided in the past, and *ultimately a court may have to determine the effect, if any, of the contingency clause* contained in Senate Bill 7. *With the signing of the bill, the State will initiate steps toward the implementation of Senate Bill 7.*” (emphasis added). An accurate copy of this press release is attached hereto as **Exhibit 2.**

34. Though he still intends for Defendants to move forward with implementing Section A of SB No. 7, the Governor later recognized the “uncertainty” created by the contingency clause in Section B of SB No. 7, issuing, in conjunction with signing ceremonies on or about November 9, 2011, a press release stating: “Senate Bill 7 contains a clause stating that its effective date is contingent on the passage of an unrelated bill. Gov. Nixon said he will work with the General Assembly during the 2012 legislative session for a simple fix to eliminate any uncertainty caused by that language.” An accurate copy of this press release is attached hereto as **Exhibit 3.**

35. Plaintiffs, however, maintain that the failure of the contingency in Section B of SB No. 7 to occur, and the impossibility that it will ever occur, renders Section A of SB No. 7 void and a legal nullity.

**A Controversy Exists Between Plaintiffs and
Defendants as to the Validity of Section A of SB No. 7**

36. Under Missouri law, contingency clauses in legislation are valid and enforceable.

37. Plaintiffs maintain that under Missouri law, the contingency clause in Section B of SB No. 7 is valid and enforceable and renders Section A of SB No. 7 void and a legal nullity.

38. The Governor, however, maintains that the contingency clause in Section B of SB No. 7 somehow should be voided and that perhaps “a court may have to determine the effect, if any, of the contingency clause contained in Senate Bill 7.” (Exhibit 2.)

39. Notwithstanding his acknowledgement that SB No. 7 in fact contains a contingency clause, that the contingency in fact did not occur, and that the contingency clause renders Section A of SB No. 7 void and a legal nullity, the Governor intends that Defendants take steps to implement Section A of SB No. 7. (*Id.*)

40. Implementation of Section A of SB No. 7 is not only an *ultra vires* exercise of power by Defendants but also an unconstitutional and wasteful expenditure of government resources that harms Plaintiffs as taxpayers of the State.

41. Plaintiffs lack an adequate remedy at law and therefore, under Rule 92 of the Missouri Rules of Civil Procedure and Mo. Rev. Stat. §§ 526.010, *et seq.*, seek to have the Court permanently enjoin Defendants, and each of them, and all those in active concert or participation with them, from taking any action to implement or otherwise effectuate any provisions of Section A of SB No. 7.

WHEREFORE, Plaintiffs respectfully pray that the Court enter its judgment:

- (A) Declaring that the contingency clause in Section B of SB No. 7 is valid and enforceable;
- (B) Declaring that the contingency set forth in that clause – the passage of SB No. 8 by the General Assembly in the first extraordinary session of the first regular session of the 96th

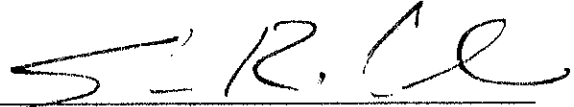
general assembly -- did not, and because such extraordinary session is over, cannot ever, occur;

- (C) Declaring that section A of SB No. 7 is void and a legal nullity;
- (D) Permanently enjoining Defendants, and each of them, and all those in active concert or participation with them, from taking any action to implement or otherwise effectuate any provisions of Section A of SB No. 7;
- (E) Awarding Plaintiffs their attorneys' fees, expenses, and costs pursuant to, *inter alia*, Mo. Rev. Stat. § 527.100; and
- (F) Granting Plaintiffs such other and further relief as the Court deems just and proper.

Dated: December 1, 2011

Respectfully submitted,

CLARK LAW FIRM, LLC



~~Stephen Robert Clark, #41417
7733 Forsyth Blvd., Suite 1950
St. Louis, MO 63105
Telephone: (314) 473-4180
Facsimile: (314) 373-4955
sclark@sclarklaw.com~~

and

LAW OFFICES OF TODD S. JONES

Todd S. Jones, #51138
231 S. Bemiston Ave.
Suite 800
St. Louis, MO 63105
Telephone: (314) 854-1381
Facsimile: (314) 854-9118
tsjlaw@sbcglobal.net

*Attorneys for Plaintiffs Missouri Roundtable
for Life, Inc., Frederic N. Sauer, Missouri
Right to Life, and Pam Fichter*



FIRST EXTRAORDINARY SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 7

96TH GENERAL ASSEMBLY

2011

00338.03T

AN ACT

To repeal sections 196.1109, 196.1115, 348.251, 348.253, 348.256, 348.261, 348.262, 348.263, 348.264, 348.271, and 348.300, RSMo, and to enact in lieu thereof fourteen new sections relating to science and innovation, with a contingent effective date.

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

Section A. Sections 196.1109, 196.1115, 348.251, 348.253, 348.256, 348.261, 348.262, 348.263, 348.264, 348.271, and 348.300, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 196.1109, 196.1115, 348.250, 348.251, 348.256, 348.257, 348.261, 348.262, 348.263, 348.264, 348.265, 348.269, 348.271, and 348.300, to read as follows:

196.1109. All moneys that are appropriated by the general assembly from the life sciences research trust fund shall be appropriated to the life sciences research board to increase the capacity for quality of life sciences research at public and private not-for-profit institutions in the state of Missouri and to thereby:

(1) Improve the quantity and quality of life sciences research at public and private not-for-profit institutions, including but not limited to basic research (including the discovery of new knowledge), translational research (including translating knowledge into a usable form), and clinical research (including the literal application of a therapy or intervention to determine its efficacy), including but not limited to health research in human development and aging, cancer, endocrine, cardiovascular, neurological, pulmonary, and infectious disease, and

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

13 plant sciences, including but not limited to nutrition and food safety; and
14 (2) Enhance technology transfer and technology commercialization derived
15 from research at public and private not-for-profit institutions within the centers
16 for excellence. For purposes of sections 196.1100 to 196.1130, "technology
17 transfer and technology commercialization" includes stages of the regular
18 business cycle occurring after research and development of a life science
19 technology, including but not limited to reduction to practice, proof of concept,
20 and achieving federal Food and Drug Administration, United States Department
21 of Agriculture, or other regulatory requirements in addition to the definition in
22 section 348.251. Funds received by the board may be used for purposes
23 authorized in sections 196.1100 to 196.1130 and shall be subject to the
24 restrictions of sections 196.1100 to 196.1130, including but not limited to the
25 costs of personnel, supplies, equipment, and renovation or construction of physical
26 facilities; provided that in any single fiscal year no more than [ten] thirty
27 percent of the moneys appropriated shall be used for the construction of physical
28 facilities and further provided that in any fiscal year up to eighty percent of the
29 moneys shall be appropriated to build research capacity at public and private
30 not-for-profit institutions and at least twenty percent and no more than fifty
31 percent of the moneys shall be appropriated for grants to public or private
32 not-for-profit institutions to promote life science technology transfer and
33 technology commercialization. Of the moneys appropriated to build research
34 capacity, twenty percent of the moneys shall be appropriated to promote the
35 development of research of tobacco-related illnesses.

196.1115. 1. The moneys appropriated to the life sciences research board
2 that are not distributed by the board in any fiscal year to a center for excellence
3 or a center for excellence endorsed program pursuant to section 196.1112, if any,
4 shall be held in reserve by the board or shall be awarded on the basis of peer
5 review panel recommendations for capacity building initiatives proposed by public
6 and private not-for-profit academic, research, or health care institutions or
7 organizations, or individuals engaged in competitive research in targeted fields
8 consistent with the provisions of sections 196.1100 to 196.1130.

9 2. The life sciences research board may, in view of the limitations
10 expressed in section 196.1130:

11 (1) Award and enter into grants or contracts relating to increasing
12 Missouri's research capacity at public or private not-for-profit institutions;

13 (2) Make provision for peer review panels to recommend and review

14 research projects;

15 (3) Contract for [administrative and] support services;

16 (4) Lease or acquire facilities and equipment;

17 (5) Employ administrative staff; and

18 (6) Receive, retain, hold, invest, disburse or administer any moneys that
19 it receives from appropriations or from any other source.

20 3. **The Missouri technology corporation, established under**
21 **section 348.251, shall serve as the administrative agent for the life**
22 **sciences research board.**

23 4. The life sciences research board shall utilize as much of the moneys as
24 reasonably possible for building capacity at public and private not-for-profit
25 institutions to do research rather than for administrative expenses. The board
26 shall not in any fiscal year expend more than two percent of the total moneys
27 appropriated to it and of the moneys that it has in reserve or has received from
28 other sources for its own administrative expenses **for appropriations equal to**
29 **or greater than twenty million dollars; three percent for appropriations**
30 **less than twenty million dollars but equal to or greater than fifteen**
31 **million dollars; four percent for appropriations less than fifteen million**
32 **dollars but equal to or greater than ten million dollars; five percent for**
33 **appropriations less than ten million dollars; provided, however, that the**
34 **general assembly by appropriation from the life sciences research trust fund may**
35 **authorize a limited amount of additional moneys to be expended for**
36 **administrative costs.**

348.250. Sections 348.250 to 348.275 shall be known and may be
2 cited as the "Missouri Science and Innovation Reinvestment Act".

348.251. 1. As used in sections 348.251 to 348.266, the following terms
2 mean:

3 (1) "Applicable percentage", six percent for the fiscal year
4 beginning July 1, 2012, and the next fourteen consecutive fiscal years;
5 five percent for the immediately subsequent five fiscal years; and four
6 percent for the immediately subsequent five fiscal years;

7 (2) "Applied research", any activity that seeks to utilize,
8 synthesize, or apply existing knowledge, information, or resources to
9 the resolution of a specific problem, question, or issue of science and
10 innovation, including but not limited to translational research;

11 (3) "Base year", fiscal year ending June 30, 2010;

12 (4) "Base year gross wages", gross wages paid by science and
13 innovation companies to science and innovation employees during
14 fiscal year ending June 30, 2010;

15 (5) "Basic research", any original investigation for the
16 advancement of scientific or technical knowledge of science and
17 innovation;

18 (6) "Commercialization", any of the full spectrum of activities
19 required for a new technology, product, or process to be developed
20 from the basic research or conceptual stage through applied research
21 or development to the marketplace, including without limitation, the
22 steps leading up to and including licensing, sales, and service;

23 (7) "Corporation", the Missouri technology corporation
24 established under this section;

25 (8) "Fields of applicable expertise", any of the following fields:
26 science and innovation research, development, or commercialization,
27 including basic research and applied research; corporate finance,
28 venture capital, and private equity related to science and innovation;
29 the business and management of science and innovation companies;
30 education related to science and innovation; or civic or corporate
31 leadership in areas related to science and innovation;

32 (9) "Inherent conflict of interest", a fundamental or systematic
33 conflict of interest that prevents a person from serving as a
34 disinterested director of the corporation and from routinely performing
35 his or her duties as a director of the corporation;

36 (10) "NAICS industry groups" or "NAICS codes", the North
37 American Industry Classification System developed under the auspices
38 of the United States Office of Management and Budget and adopted in
39 1997, as may be amended, revised, or replaced by similar classification
40 systems for similar uses from time to time;

41 (11) "Science and innovation", the use of compositions and
42 methods in research, development, and manufacturing processes for
43 such diverse areas as agriculture-biotechnology, animal health,
44 biochemistry, bioinformatics, energy, environment, forestry, homeland
45 security, information technology, medical devices, medical diagnostics,
46 medical instruments, medical therapeutics, microbiology,
47 nanotechnology, pharmaceuticals, plant biology, and veterinary
48 medicine, including future developments in such areas;

49 (12) "Science and innovation company", a corporation, limited
50 liability company, S corporation, partnership, registered limited
51 liability partnership, foundation, association, nonprofit entity, sole
52 proprietorship, business trust, person, group, or other entity that is:

53 (a) Engaged in the research, development, commercialization, or
54 business of science and innovation in the state, including, without
55 limitation, research, development, or production directed toward
56 developing or providing science and innovation products, processes, or
57 services for specific commercial or public purposes, including
58 hospitals, nonprofit research institutions, incubators, accelerators, and
59 universities currently located or involved in the research, development,
60 commercialization, or business of science and innovation in the state;
61 or

62 (b) Identified by the following NAICS industry groups or NAICS
63 codes or any amended or successor code sections covering such areas
64 of research, development, and commercial endeavors: 3251; 3253; 3254;
65 3391; 51121; 54138; 54171; 62231; 111191; 111421; 111920; 111998; 311119;
66 311211; 311221; 311222; 311223; 325193; 325199; 325221; 325222; 325611;
67 325612; 325613; 325311; 325312; 325314; 325320; 325411; 325412; 325414;
68 333298; 334510; 334516; 334517; 339111; 339112; 339113; 339114; 339115;
69 339116; 424910; 541710; 621511; and 621512.

70 Each of the above listed four-digit and five-digit codes shall include all
71 six-digit codes in such four-digit and five-digit industry; however, each
72 six-digit code shall stand alone and not indicate the inclusion of other
73 omitted six-digit codes that also are subsets of the pertinent four-digit
74 or five-digit industry to which the included six-digit code belongs;

75 (13) "Science and innovation employee", any employee, officer, or
76 director of a science and innovation company who is a state income
77 taxpayer and any employee of a university who is associated with or
78 supports the research, development, commercialization, or business of
79 science and technology in the state and is obligated to pay state income
80 tax to the state;

81 (14) "Technology application", the introduction and adaptation of refined
82 management practices in fields such as scheduling, inventory management,
83 marketing, product development, and training in order to improve the quality,
84 productivity and profitability of an existing firm. Technology application shall
85 be considered a component of business modernization;

86 [(2) "Technology commercialization", the process of moving
87 investment-grade technology from a business, university or laboratory into the
88 marketplace for application;

89 (3)] (15) "Technology development", strategically focused research
90 directed at developing investment-grade technologies which are important for
91 market competitiveness.

92 2. The governor may, on behalf of the state and in accordance with
93 chapter 355, RSMo, establish a private not-for-profit corporation named the
94 "Missouri Technology Corporation", to carry out the provisions of sections 348.251
95 to 348.266. As used in sections [348.251 to 348.266] 348.250 to 348.275 the
96 word "corporation" means the Missouri technology corporation authorized by this
97 section. Before certification by the governor, the corporation shall conduct a
98 public hearing for the purpose of giving all interested parties an opportunity to
99 review and comment [upon] on the articles of incorporation, bylaws and [method]
100 methods of operation of the corporation. Notice of the hearing shall be given at
101 least fourteen days prior to the hearing.

348.256. 1. The articles of incorporation [and], bylaws, and methods of
2 operation of the Missouri technology corporation shall [provide that:] be
3 consistent with the provisions of sections 348.250 to 348.275.

4 [(1)] 2. The purposes of the corporation are to contribute to the
5 strengthening of the economy of the state through the development of science and
6 [technology] innovation, to promote the modernization of Missouri businesses
7 by supporting the transfer of science, technology and quality improvement
8 methods to the workplace[, and]; to enhance the productivity and modernization
9 of Missouri businesses by providing leadership in the establishment of methods
10 of technology application, technology commercialization and technology
11 development; to make Missouri businesses, institutions, and universities
12 more competitive and increase their likelihood of success; to support
13 and enhance local and regional strategies and initiatives that capitalize
14 on the unique science and innovation assets across the state; to make
15 Missouri a highly desirable state in which to conduct, facilitate,
16 support, fund, and perform science and innovation research,
17 development, and commercialization; to facilitate and effect the
18 creation, attraction, retention, growth, and enhancement of both
19 existing and new science and innovation companies in the state; to
20 make Missouri a national and international leader in economic activity

21 based on science and innovation; to enhance workforce development;
22 to create and retain quality jobs; to advance scientific knowledge; and
23 to improve the quality of life for the citizens of the state of Missouri in
24 both urban and rural communities.

25 [(2)] 3. The board of directors of the corporation [is] shall be composed
26 of fifteen persons. The governor shall annually appoint one of its members, who
27 must be from the private sector, as [chairman] chairperson. The board shall
28 consist of the following members:

29 [(a)] (1) The director of the department of economic development, or the
30 director's designee;

31 [(b)] (2) The president of the University of Missouri system, or the
32 president's designee;

33 [(c)] (3) A member of the state senate, appointed by the president pro
34 tem of the senate;

35 [(d)] (4) A member of the house of representatives, appointed by the
36 speaker of the house;

37 [(e)] (5) Eleven members appointed by the governor, [two of which shall
38 be from the public sector and nine members from the private sector who shall
39 include, but shall not be limited to, individuals who represent technology-based
40 businesses and industrial interests;

41 [(f)] with the advice and consent of the senate, who are recognized
42 for outstanding knowledge, leadership, and expertise in one or more of
43 the fields of applicable expertise.

44 Each of the directors of the corporation who is appointed by the governor shall
45 serve for a term of four years and until a successor is duly appointed[; except
46 that, of the directors serving on the corporation as of August 28, 1995, three
47 directors shall be designated by the governor to serve a term of four years, three
48 directors shall be designated to serve a term of three years, three directors shall
49 be designated to serve a term of two years, and two directors shall be designated
50 to serve a term of one year. Each director shall continue to serve until a
51 successor is duly appointed by the governor;

52 (3) The corporation may receive money from any source, may borrow
53 money, may enter into contracts, and may expend money for any activities
54 appropriate to its purpose;

55 (4) The corporation may appoint staff and do all other things necessary
56 or incidental to carrying out the functions listed in section 348.261;

57 (5)].

58 4. Any changes in the articles of incorporation or bylaws must be
59 approved by the governor[;].

60 [(6) The corporation shall submit an annual report to the governor and to
61 the Missouri general assembly. The report shall be due on the first day of
62 November for each year and shall include detailed information on the structure,
63 operation and financial status of the corporation. The corporation shall conduct
64 an annual public hearing to receive comments from interested parties regarding
65 the report, and notice of the hearing shall be given at least fourteen days prior
66 to the hearing; and

67 (7)] 5. At the discretion of the state auditor, the corporation is
68 subject to an [annual] audit by the state auditor and [that] the corporation shall
69 bear the full cost of the audit.

70 6. Each of the directors of the corporation provided for in
71 subdivisions (1) and (2) of subsection 3 of this section shall remain a
72 director until the designating individual specified in such subdivisions
73 designates a replacement by sending a written communication to the
74 governor and the chairperson of the board of the corporation; provided,
75 however, that if the director of economic development or the president
76 of the University of Missouri system designates himself or herself to the
77 corporation board, such person's service as a corporation director shall
78 cease immediately when that person no longer serves as the director of
79 economic development or as the president of the University of Missouri
80 system. Each of the directors of the corporation provided for in
81 subdivisions (3) and (4) of subsection 3 of this section shall remain a
82 director until the appointing member of the general assembly specified
83 in such subdivisions appoints a replacement by sending a written
84 communication to the governor and the chairperson of the corporation
85 board; provided, however, that if the speaker of the house or the
86 president pro tem of the senate appoints himself or herself to the
87 corporation board, such person's service as a corporation director shall
88 cease immediately when that person no longer serves as the speaker of
89 the house or the president pro tem of the senate.

90 7. Each of the eleven members of the board appointed by the
91 governor shall:

92 (1) Hold office for the term of appointment and until the

93 governor duly appoints his or her successor; provided that if a vacancy
94 is created by the death, permanent disability, resignation, or removal
95 of a director, such vacancy shall become immediately effective;

96 (2) Be eligible for reappointment, but members of the board shall
97 not be eligible to serve more than two consecutive four-year terms and
98 shall not be reappointed to the board until they have not served on the
99 board for a period of at least four interim years;

100 (3) Not have a known inherent conflict of interest at the time of
101 appointment; and

102 (4) Not have served in an elected office or a cabinet position in
103 state government for a period of two years prior to appointment, unless
104 otherwise provided in this section.

105 8. Any member of the board may be removed by affirmative vote
106 of eleven members of the board for malfeasance or misfeasance in
107 office, regularly failing to attend meetings, failure to comply with the
108 corporation's conflicts of interest policy, conviction of a felony, or for
109 any cause that renders the member incapable of or unfit to discharge
110 the duties of a director of the corporation.

111 9. The board shall meet at least four times per year and at such
112 other times as it deems appropriate, or upon call by the president or
113 the chairperson, or upon written request of a majority of the directors
114 of the board. Unless otherwise restricted by Missouri law, the directors
115 may participate in a meeting of the board by means of telephone
116 conference or other electronic communications equipment whereby all
117 persons participating in the meeting can communicate clearly with
118 each other, and participation in a meeting in such manner will
119 constitute presence in person at such meeting.

120 10. A majority of the total voting membership of the board shall
121 constitute a quorum for meetings. The board may act by a majority of
122 those at any meeting where a quorum is present, except upon such
123 issues as the board may determine shall require a vote of more
124 members of the board for approval or as required by law. All
125 resolutions and orders of the board shall be recorded and
126 authenticated by the signature of the secretary or any assistant
127 secretary of the board.

128 11. Members of the board shall serve without
129 compensation. Members of the board attending meetings of the board,

130 or attending committee or advisory meetings thereof, shall be paid
131 mileage and all other applicable expenses, provided that such expenses
132 are reasonable, consistent with policies established from time to time
133 by the board, and not otherwise inconsistent with law.

134 12. The board may adopt, repeal, and amend such articles of
135 incorporation, bylaws, and methods of operation that are not contrary
136 to law or inconsistent with sections 348.250 to 348.275, as it deems
137 expedient for its own governance and for the governance and
138 management of the corporation and its committees and advisory
139 boards; provided that any changes in the articles of incorporation or
140 bylaws approved by the board must also be approved by the governor.

141 13. A president shall direct and supervise the administrative
142 affairs and the general management of the corporation. The president
143 shall be a person of national prominence that has expertise and
144 credibility in one or more of the fields of applicable expertise with a
145 demonstrated track record of success in leading a mission-driven
146 organization. The president's salary and other terms and conditions of
147 employment shall be set by the board. The board may negotiate and
148 enter into an employment agreement with the president of the
149 corporation, which may provide for compensation, allowances, benefits,
150 and expenses. The president of the corporation shall not be eligible to
151 serve as a member of the board until two years after the end of his or
152 her employment with the corporation. The president of the corporation
153 shall be bound by, and agree to obey, the corporation's conflicts of
154 interest policy, including annually completing and submitting to the
155 board a disclosure and compliance certificate in accordance with such
156 conflicts of interest policy.

157 14. The corporation may employ such employees as it may
158 require and upon such terms and conditions as it may establish that
159 are consistent with state and federal law. The corporation may
160 establish personnel, payroll, benefit, and other such systems as
161 authorized by the board, and provide death and disability
162 benefits. Corporation employees, including the president, shall be
163 considered state employees for the purposes of membership in the
164 Missouri state employees' retirement system and the Missouri
165 consolidated health care plan. Compensation paid by the corporation
166 shall constitute pay from a department for purposes of accruing

167 benefits under the Missouri state employees' retirement system. The
168 corporation may also adopt, in accordance with requirements of the
169 federal Internal Revenue Code of 1986, as amended, a defined
170 contribution plan sponsored by the corporation with respect to
171 employees, including the president, employed by the
172 corporation. Nothing in sections 348.250 to 348.275 shall be construed
173 as placing any officer or employee of the corporation or member of the
174 board in the classified or the unclassified service of the state of
175 Missouri under Missouri laws and regulations governing civil service.
176 No employee of the corporation shall be eligible to serve as a member
177 of the board until two years immediately following the end of his or her
178 employment with the corporation. All employees of the corporation
179 shall be bound by, and agree to obey, the corporation's conflicts of
180 interest policy, including annually completing and submitting to the
181 board a disclosure and compliance certificate in accordance with such
182 conflicts of interest policy.

183 15. No later than the first day of January each year, the
184 corporation shall submit an annual report to the governor and to the
185 Missouri general assembly which the corporation may contract with a
186 third party to prepare and which shall include:

187 (1) A complete and detailed description of the operating and
188 financial conditions of the corporation during the prior fiscal year;

189 (2) Complete and detailed information about the distributions
190 from the Missouri science and innovation reinvestment fund and from
191 any income of the corporation;

192 (3) Information about the growth of science and innovation
193 research and industry in the state;

194 (4) Information regarding financial or performance audits
195 performed in such year, including any recommendations with reference
196 to additional legislation or other action that may be necessary to carry
197 out the purposes of the corporation; and

198 (5) Whether or not the corporation made any distribution during
199 the prior fiscal year to a research project or other project for which a
200 report shall be filed under subsection 4 of section 38(d) of article III of
201 the Constitution of the State of Missouri. If such a distribution was
202 made, the corporation shall disclose in the annual report the amount
203 of the distribution, the recipient of the distribution, and the project

204 description.

205 16. The corporation shall keep its books and records in
206 accordance with generally accepted accounting procedures. Within
207 four months following the end of each fiscal year, the corporation shall
208 cause a firm of independent certified public accountants of national
209 repute to conduct and deliver to the board an audit of the financial
210 statements of the corporation and an opinion thereon, to be conducted
211 in accordance with generally accepted audit standards, provided,
212 however, that this section shall be inapplicable if the board of directors
213 of the corporation determines that insufficient funds have been
214 appropriated to pay for the costs of compliance with these
215 requirements.

216 17. Within four months following the end of every odd numbered
217 fiscal year, beginning with fiscal year 2016, the corporation shall cause
218 an independent firm of national repute that has expertise in science
219 and innovation research and industry to conduct and deliver to the
220 board an evaluation of the performance of the corporation for the prior
221 two fiscal years, including detailed recommendations for improving the
222 performance of the corporation, provided, however, that this section
223 shall be inapplicable if the board of directors of the corporation
224 determines that insufficient funds have been appropriated to pay for
225 the costs of compliance with these requirements.

226 18. The corporation shall provide the state auditor a copy of the
227 financial and performance evaluations prepared under subsections 16
228 and 17 of this section.

229 19. The corporation shall have perpetual existence until an act
230 of law expressly dissolves the corporation; provided that no such law
231 shall take effect so long as the corporation has obligations or bonds
232 outstanding unless adequate provision has been made for the payment
233 or retirement of such debts or obligations. Upon any such dissolution
234 of the corporation, all property, funds, and assets thereof shall be
235 vested in the state.

236 20. Except as provided under section 348.266, the state hereby
237 pledges to, and agrees with, recipients of corporation funding or
238 beneficiaries of corporation programs under sections 348.250 to 348.275
239 that the state shall not limit or alter the rights vested in the
240 corporation under sections 348.250 to 348.275 to fulfill the terms of any

241 agreements made or obligations incurred by the corporation with or to
242 such third parties, or in any way impair the rights and remedies of
243 such third parties until the obligations of the corporation and the state
244 are fully met and discharged in accordance with sections 348.250 to
245 348.275.

246 21. The corporation shall be exempt from:

247 (1) Any general ad valorem taxes upon any property of the
248 corporation acquired and used for its public purposes;

249 (2) Any taxes or assessments upon any projects or upon any
250 operations of the corporation or the income therefrom;

251 (3) Any taxes or assessments upon any project or any property
252 or local obligation acquired or used by the corporation under the
253 provisions of sections 348.250 to 348.275, or upon income therefrom.

254 Purchases by the corporation to be used for its public purposes shall
255 not be subject to sales or use tax under chapter 144. The exemptions
256 hereby granted shall not extend to persons or entities conducting
257 business on the corporation's property for which payment of state and
258 local taxes would otherwise be required.

259 22. No funds of the corporation shall be distributed to its
260 employees or members of the board; except that, the corporation may
261 make reasonable payments for expenses incurred on its behalf relating
262 to any of its lawful purposes and the corporation shall be authorized
263 and empowered to pay reasonable compensation for services rendered
264 to, or for, its benefit relating to any of its lawful purposes, including to
265 pay its employees reasonable compensation.

266 23. The corporation shall adopt and maintain a conflicts of
267 interest policy to protect the corporation's interests by requiring
268 disclosure by an interested party, appropriate recusal by such person,
269 and appropriate action by the interested party or the board where a
270 conflict of interest may exist or arise between the corporation and a
271 director, officer, employee, or agent of the corporation.

348.257. 1. The board shall establish an executive committee of
2 the corporation, to be composed of the chairperson, the vice-
3 chairperson, and the secretary of the corporation, and two additional
4 directors. The chairperson of the corporation shall serve as the
5 chairperson of the executive committee.

6 2. The executive committee, in intervals between meetings of the

7 board, may transact any business of the board that has been expressly
8 delegated to the executive committee by the board. If so stipulated by
9 the board, action delegated to the executive committee may be subject
10 to subsequent ratification by the board; provided, however, that until
11 ratified or rejected by the board, any action delegated to, and taken by,
12 the executive committee between meetings of the board will be binding
13 upon the corporation as if ratified, and may be relied upon by third
14 parties.

15 3. The board shall establish an audit committee of the
16 corporation, to be composed of the chairperson of the corporation and
17 four additional directors. The secretary of the corporation shall serve
18 as the chairperson of the audit committee. The audit committee shall
19 be responsible for oversight of the administration of the conflicts of
20 interest policy, working with the president of the corporation to
21 facilitate communications with the corporation's contract auditors, and
22 such other responsibilities delegated to it by the board.

23 4. The board shall establish and maintain a research alliance of
24 Missouri to be comprised of the chief research officers, or their
25 designee, of the state's leading research universities and a
26 representative of other leading not-for-profit research institutes
27 headquartered in Missouri. Members of the research alliance of
28 Missouri shall be selected for such terms of membership under such
29 terms and conditions as the board deems necessary and appropriate to
30 advance the purposes of sections 348.250 to 348.275 and as comparable
31 to other similar public sector bodies. The research alliance of Missouri
32 shall elect a chairperson on an annual basis. The research alliance of
33 Missouri shall prepare annual reports at the direction of the
34 corporation that:

35 (1) Evaluate the specific areas of Missouri's research strengths
36 and weaknesses and outline current research priorities of the state;

37 (2) Evaluate the ability of each member to realign their research
38 and development resources, policies, and practices to seize emerging
39 opportunities;

40 (3) Evaluate and summarize the best national and international
41 practices for technology commercialization of university research and
42 describe efforts that each university member has undertaken to
43 implement best practices, including a description of the specific

44 outcomes university members have achieved in technology
45 commercialization; and

46 (4) Describe research collaborations by and between members
47 and identify collaboration best practices that can or should be
48 instituted in Missouri.

49 5. The board may establish other committees, both permanent
50 and temporary, as it deems necessary. Such committees may include
51 national strategic, scientific and/or commercialization advisory boards
52 comprised of individuals of national or international prominence in
53 science and innovation and/or the business and commercialization of
54 science and innovation.

55 6. The board may establish rules, policies, and procedures for the
56 selection and conduct of committees and advisory boards, and the
57 research alliance of Missouri; provided, however, that the members of
58 such committees and advisory boards agree to be bound by a conflict
59 of interest policy consistent with the highest ethical standards that is
60 suitable for such advisory roles and annually complete and certify to
61 the board a disclosure and compliance certificate in accordance with
62 such conflicts of interest policy.

348.261. 1. The corporation[, after being certified by the governor as
2 provided by section 348.251, may] shall have all of the powers necessary or
3 convenient to carry out the purposes and provisions of sections 348.250
4 to 348.275, including the powers as specified therein, and without
5 limitation, the power to:

6 (1) Establish a statewide business modernization network to assist
7 Missouri businesses in identifying ways to enhance productivity and market
8 competitiveness;

9 (2) Identify scientific and technological problems and opportunities related
10 to the economy of Missouri and formulate proposals to overcome those problems
11 or realize those opportunities;

12 (3) Identify specific areas where scientific research and technological
13 investigation will contribute to the improvement of productivity of Missouri
14 manufacturers and farmers;

15 (4) Determine specific areas in which financial investment in scientific
16 and technological research and development from private businesses located in
17 Missouri could be enhanced or increased if state resources were made available

18 to assist in financing activities;

19 (5) Assist in establishing cooperative associations of universities in
20 Missouri and of private enterprises for the purpose of coordinating research and
21 development programs that will, consistent with the primary educational function
22 of the universities, aid in the creation of new jobs in Missouri;

23 (6) Assist in financing the establishment and continued development of
24 technology-intensive businesses in Missouri;

25 (7) Advise universities of the research needs of Missouri business and
26 improve the exchange of scientific and technological information for the mutual
27 benefit of universities and private business;

28 (8) Coordinate programs established by universities to provide Missouri
29 businesses with scientific and technological information;

30 (9) Establish programs in scientific education which will support the
31 accelerated development of technology-intensive businesses in Missouri;

32 (10) Provide financial assistance through contracts, grants and loans to
33 programs of scientific and technological research and development;

34 (11) Determine how public universities can increase income derived from
35 the sale or licensure of products or processes having commercial value that are
36 developed as a result of university sponsored research programs;

37 (12) Contract with innovation centers, as established in section 348.271,
38 small business development corporations, as established in sections 620.1000 to
39 620.1007, centers for advanced technology, as established in section 348.272, and
40 other entities or organizations for the provision of technology application,
41 technology commercialization and technology development services. [Such
42 contracting procedures shall not be subject to the provisions of chapter 34; and];

43 (13) Make direct seed capital or venture capital investments in Missouri
44 business investment funds or businesses [which] that demonstrate the promise
45 of growth and job creation. Investments from the corporation may be in the form
46 of debt or equity in the respective businesses;

47 (14) Make and execute contracts, guarantees, or any other
48 instruments and agreements necessary or convenient for the exercise
49 of its powers and functions;

50 (15) Contract for and to accept any gifts, grants, and loans of
51 funds, property, or any other aid in any form from the federal
52 government, the state, any state agency, or any other source, or any
53 combination thereof, and to comply with the provisions of the terms

54 and conditions thereof;

55 (16) Procure such insurance, participate in such insurance plans,
56 or provide such self insurance or both as it deems necessary or
57 convenient; provided, however, the purchase of insurance,
58 participation in an insurance plan, or creation of a self-insurance fund
59 by the corporation shall not be deemed as a waiver or relinquishment
60 of any sovereign immunity to which the corporation or its officers,
61 directors, employees, or agents are otherwise entitled;

62 (17) Partner with universities or other research institutions in
63 Missouri to attract and recruit world-class science and innovation
64 talent to Missouri;

65 (18) Expend any and all funds from the Missouri science and
66 innovation reinvestment fund and all other assets and resources of the
67 corporation for the exclusive purpose of fulfilling any purpose, power,
68 or duty of the corporation under sections 348.250 to 348.275, including
69 but not limited to implementing the powers, purposes, and duties of the
70 corporation as enumerated in this section;

71 (19) Participate in joint ventures and collaborate with any
72 taxpayer, governmental body or agency, insurer, university, or college
73 of the state, or any other entity to facilitate any activities or programs
74 consistent with the purpose and intent of sections 348.250 to 348.275;
75 and

76 (20) In carrying out any activities authorized by sections 348.250
77 to 348.275, the corporation provides appropriate assistance, including
78 the making of investments, grants, and loans, and providing time of
79 employees, to any taxpayer, governmental body, or agency, insurer,
80 university, or college of the state, or any other entity, whether or not
81 any such taxpayer, governmental body or agency, insurer, university,
82 or college of the state, or any other entity, is owned or controlled in
83 whole or in part, directly or indirectly, by the corporation.

84 2. The corporation shall endeavor to maximize the amount of
85 leveraging of nonstate resources, including public and private, cash
86 and in-kind, attained with its investments, grants, loans, or other forms
87 of support. In the case of investments, grants, loans, or other forms of
88 support that emphasize or are specifically intended to impact a
89 particular Missouri county, municipality, or other geographic
90 subdivision of the state, or are otherwise local in nature, the

91 corporation shall give consideration and weight to local matching funds
92 and other matching resources, public and private.

93 3. Except as expressly provided in sections 348.250 to 348.275, all
94 monies earned or received by the corporation, including all funds
95 derived from the commercialization of science and innovation products,
96 methods, services, and technology by the corporation, or any affiliate
97 or subsidiary thereof, or from the Missouri science and innovation
98 reinvestment fund, shall belong exclusively to and be subject to the
99 exclusive control of the corporation.

100 4. The corporation shall have all the powers of a not-for-profit
101 corporation established under Missouri law.

102 5. The corporation shall assume all moneys, property, or other
103 assets remaining with the Missouri seed capital investment board,
104 established in section 620.641. All powers, duties, and functions
105 performed by the Missouri seed capital investment board shall be
106 transferred to the Missouri technology corporation.

107 6. The corporation shall not be subject to the provisions of
108 chapter 34.

109 7. At least ten days prior to releasing funds to a recipient of
110 financial assistance pursuant to the powers established in this section,
111 the corporation shall submit to the president pro tem of the senate and
112 the speaker of the house of representatives the name of the recipient
113 of such assistance, and post such information on the corporation's
114 website.

348.262. In order to assist the corporation in achieving the objectives
2 identified in section 348.261, the department of economic development may
3 contract with the corporation for activities consistent with the corporation's
4 purpose, as specified in [section 348.256] sections 348.250 to 348.275. When
5 contracting with the corporation under the provisions of this section, the
6 department of economic development may directly enter into agreements with the
7 corporation and shall not be bound by the provisions of chapter 34, RSMo.

348.263. 1. [The Missouri business modernization and technology
2 corporation shall replace the corporation for science and technology. All moneys,
3 property or any other assets remaining with the corporation for science and
4 technology after all obligations are satisfied on August 28, 1993, shall be
5 transferred to the Missouri business modernization and technology corporation.

6 All powers, duties and functions performed by the Missouri corporation of science
7 and technology on August 28, 1993, shall be transferred to the Missouri business
8 modernization and technology corporation.] Except as otherwise provided in
9 sections 348.250 to 348.275, the corporation shall be subject to
10 requirements applicable to governmental bodies and records contained
11 in sections 610.010 to 610.225.

12 2. [The Missouri technology corporation shall replace the Missouri
13 business modernization and technology corporation. All moneys, property or any
14 other assets remaining with the Missouri business modernization and technology
15 corporation after all obligations are satisfied on August 28, 1994, shall be
16 transferred to the Missouri technology corporation. All powers, duties and
17 functions performed by the Missouri business modernization and technology
18 corporation on August 28, 1994, shall be transferred to the Missouri technology
19 corporation.] In addition to the exceptions available under sections
20 610.010 to 610.225, the records of the corporation shall not be subject
21 to the provisions of sections 610.010 to 610.225, when, upon
22 determination by the corporation, the disclosure of the information in
23 the records would be harmful to the competitive position of the
24 corporation and such records contain:

25 (1) Proprietary information gathered by, or in the possession of,
26 the corporation from third parties pursuant to a promise of
27 confidentiality;

28 (2) Contract cost estimates prepared for confidential use in
29 awarding contracts for research, development, construction,
30 renovation, commercialization, or the purchase of goods or services;

31 (3) Data, records, or information of a proprietary nature
32 produced or collected by, or for, the corporation, its employees,
33 officers, or members of its board;

34 (4) Third-party financial statements, records, and related data
35 not publicly available that may be shared with the corporation;

36 (5) Consulting or other reports paid for by the corporation to
37 assist the corporation in connection with its strategic planning and
38 goals; or

39 (6) The determination of marketing and operational strategies
40 where disclosure of such strategies would be harmful to the
41 competitive position of the corporation.

42 3. In addition to the exceptions available under sections 610.010

43 to 610.225, the corporation, including the board, executive committee,
44 audit committee, and research alliance of Missouri, or other such
45 committees or boards that the corporation may authorize from time to
46 time, may discuss, consider, and take action on any of the following in
47 closed session, when upon determination by the corporation, including
48 as appropriate the board, executive committee, audit committee, and
49 research alliance of Missouri, or other such committees or boards that
50 the corporation may authorize from time to time, disclosure of such
51 items would be harmful to the competitive position of the corporation:

52 (1) Plans that could affect the value of property, real or personal,
53 owned, or desirable for ownership by the corporation;

54 (2) The condition, acquisition, use, or disposition of real or
55 personal property; or

56 (3) Contracts for applied research; basic research; science and
57 innovation product development, manufacturing, or commercialization;
58 construction and renovation of science and innovation facilities; or
59 marketing or operational strategies.

348.264. [1.] There is hereby established in the state treasury a special
2 fund to be known as the "Missouri [Technology Investment] Science and
3 Innovation Reinvestment Fund", previously established as the Missouri
4 Technology Investment Fund in section 348.264, which shall consist of all
5 moneys which may be appropriated to it by the general assembly based on the
6 applicable percentage of the amount by which science and innovation
7 employees' gross wages for the year exceeds the base year gross wages
8 pursuant to section 348.265; other funds appropriated to it by the
9 general assembly, and also any gifts, contributions, grants or bequests received
10 from federal, private or other sources. [Such moneys shall include federal funds
11 which may be received from the National Institute for Science and Technology,
12 the Small Business Administration and the Department of Defense through its
13 Technology Reinvestment Program.] Money in the Missouri [technology
14 investment program] science and innovation reinvestment fund shall be
15 used to carry out the provisions of sections [348.251] 348.250 to 348.275. Moneys
16 for business modernization programs, technology application programs,
17 technology commercialization programs and technology development programs
18 established pursuant to the provisions of sections [348.251] 348.250 to 348.275
19 shall be available from appropriations made by the general assembly from the

20 Missouri [technology investment] science and innovation reinvestment
21 fund. Any moneys remaining in the Missouri [technology investment] science
22 and innovation reinvestment fund at the end of any fiscal year shall not lapse
23 to the general revenue fund, as provided in section 33.080, but shall remain in
24 the Missouri [technology investment] science and innovation reinvestment
25 fund.

26 [2. Notwithstanding the provisions of sections 173.500 to 173.565, RSMo,
27 the Missouri technology investment fund shall be utilized to fund projects which
28 would previously have been funded through the higher education applied projects
29 fund.]

348.265. 1. As soon as practicable after the effective date of this
2 act, the director of the department of economic development, with the
3 assistance of the director of the department of revenue, shall establish
4 the base year gross wages and report the amount of the base year gross
5 wages to the president and board of the corporation, the governor, and
6 the general assembly. Within one hundred eighty days after the end of
7 each fiscal year beginning with the fiscal year ending June 30, 2011,
8 and for each subsequent fiscal year prior to the end of the last funding
9 year, the director of economic development, with the assistance of the
10 director of the department of revenue, shall determine and report to
11 the president and board of the corporation, governor, and general
12 assembly the amount by which aggregate science and innovation
13 employees' gross wages for the fiscal year exceeds the base year gross
14 wages. The director of economic development and the director of the
15 department of revenue may consider any verifiable evidence, including
16 but not limited to the NAICS codes assigned or recorded by the United
17 States Department of Labor for companies with employees in the state,
18 when determining which organizations should be classified as science
19 and innovation companies.

20 2. Notwithstanding section 23.250 to the contrary, for each of the
21 twenty-five funding years, beginning July 1, 2012, subject to
22 appropriation, the director of revenue shall transfer to the Missouri
23 science and innovation reinvestment fund an amount not to exceed an
24 amount equal to the product of the applicable percentage multiplied by
25 an amount equal to the increase in aggregate science and innovation
26 employees' gross wages for the prior fiscal year, over the base year
27 gross wages. The director of revenue may make estimated payments to

28 the Missouri science and innovation reinvestment fund more frequently
29 based on estimates provided by the director of revenue and reconciled
30 annually.

31 3. Local political subdivisions may contribute to the Missouri
32 science and innovation reinvestment fund through a grant, contract, or
33 loan by dedicating a portion of any sales tax or property tax increase
34 resulting from increases in science and innovation company economic
35 activity occurring after the effective date of this act, or other such
36 taxes or fees as such local political subdivisions may establish.

37 4. Funding generated by the provisions of this section shall be
38 expended by the corporation to further its purposes as specified in
39 section 348.256.

40 5. Upon enactment of this section, the corporation shall prepare
41 a strategic plan for the use of the funding to be generated by the
42 provisions of this section, and may consult with science and innovation
43 partners, including, but not limited to the research alliance of Missouri,
44 as established in section 348.257; the life sciences research board
45 established in section 196.1103; and the innovation centers or centers
46 for advanced technology, as established in section 348.272. The
47 corporation shall make a draft strategic plan available for public
48 comment prior to publication of the final strategic plan.

348.269. 1. Nothing contained in sections 348.250 to 348.275 shall
2 be construed as a restriction or limitation upon any powers that the
3 corporation might otherwise have under chapter 355, and the
4 provisions of sections 348.250 to 348.275 are cumulative to such powers.

5 2. Nothing in sections 348.250 to 348.275 shall be construed as
6 allowing the board to sell the corporation or substantially all of the
7 assets of the corporation, or to merge the corporation with another
8 institution, without prior authorization by the general assembly.

9 3. Notwithstanding the provisions of section 23.253 to the
10 contrary, the provisions of sections 348.250 to 348.275 shall not sunset.

11 4. The provisions of sections 348.250 to 348.275 shall not
12 terminate before the satisfaction of all outstanding obligations, notes,
13 and bonds provided for under sections 348.250 to 348.275.

14 5. If any provision of this act or the application thereof is held
15 invalid, the invalidity shall not affect other provisions or applications
16 of the act that can be given effect without the invalid provision or

17 application, and to this end the provisions of this act are
18 severable. Insofar as the provisions of sections 348.250 to 348.275 are
19 inconsistent with the provisions of any other law, general, specific or
20 local, the provisions of sections 348.250 to 348.275 shall be controlling.

348.271. 1. In order to foster the growth of Missouri's economy and to
2 stimulate the creation of new jobs in [technology-based] science and
3 innovation-based industry for the state's work force, the Missouri technology
4 corporation, in accordance with the provisions of this section and within the
5 limits of appropriations therefor is authorized to contract with Missouri
6 not-for-profit corporations for the operation of innovation centers within the
7 state. The primary emphasis of some, if not of all innovation centers, shall be in
8 the areas of [technology commercialization, finance and business
9 modernization. Innovation centers operated under the provisions of this section
10 shall provide assistance to individuals and business organizations during the
11 early stages of the development of new technology-based] science and
12 innovation-based business ventures. Such assistance may include the provision
13 of facilities, equipment, administrative and managerial support, planning
14 assistance, and such other services and programs that enhance the development
15 of such ventures and such assistance may be provided for fees or other
16 consideration.

17 2. The innovation centers operated under this section shall counsel and
18 assist the new [technology-based] science and innovation-based business
19 ventures in finding a suitable site in the state of Missouri for location of the
20 business upon its graduation from the innovation program. Each innovation
21 center shall annually submit a report of its activities to the department of
22 economic development and the Missouri technology corporation which shall
23 include, but not be limited to, the success rate of the businesses graduating from
24 the center, the progress and locations of businesses which have graduated from
25 the center, the types of businesses which have graduated from the center, and the
26 number of jobs created by the businesses involved in the center.

27 3. Any contract signed between the corporation and any not-for-
28 profit organization to operate an innovation center in accordance with
29 the provisions of this section shall require that the not-for-profit
30 organization must provide at least a one-hundred-percent match for the
31 funding received from the corporation pursuant to appropriation
32 therefor.

348.300. As used in sections 348.300 to 348.318, the following terms
2 mean:

3 (1) "Commercial activity located in Missouri", any research, development,
4 prototype fabrication, and subsequent precommercialization activity, or any
5 activity related thereto, conducted in Missouri for the purpose of producing a
6 service or a product or process for manufacture, assembly or sale or developing
7 a service based on such a product or process by any person, corporation,
8 partnership, joint venture, unincorporated association, trust or other organization
9 doing business in Missouri. Subsequent to January 1, 1999, a commercial activity
10 located in Missouri shall mean only such activity that is located within a
11 distressed community, as defined in section 135.530;

12 (2) "Follow-up capital", capital provided to a commercial activity located
13 in Missouri in which a qualified fund has previously invested seed capital or
14 start-up capital and which does not exceed ten times the amount of such seed and
15 start-up capital;

16 (3) "Person", any individual, corporation, partnership, or other entity,
17 including any charitable corporation which is exempt from federal income tax and
18 whose Missouri unrelated business taxable income, if any, would be subject to the
19 state income tax imposed under chapter 143;

20 (4) "Qualified contribution", cash contribution to a qualified fund;

21 (5) "Qualified economic development organization", any corporation
22 organized under the provisions of chapter 355 which has as of January 1, 1991,
23 obtained a contract with the department of economic development to operate an
24 innovation center to promote, assist and coordinate the research and development
25 of new services, products or processes in the state of Missouri; and the Missouri
26 technology corporation organized pursuant to the provisions of sections [348.253
27 to 348.266] **348.250 to 348.275**;

28 (6) "Qualified fund", any corporation, partnership, joint venture,
29 unincorporated association, trust or other organization which is established under
30 the laws of Missouri after December 31, 1985, which meets all of the following
31 requirements established by this subdivision. The fund shall have as its sole
32 purpose and business the making of investments, of which at least ninety percent
33 of the dollars invested shall be qualified investments. The fund shall enter into
34 a contract with one or more qualified economic development organizations which
35 shall entitle the qualified economic development organizations to receive not less
36 than ten percent of all distributions of equity and dividends or other earnings of

37 the fund. Such contracts shall require the qualified fund to transfer to the
38 Missouri technology corporation organized pursuant to the provisions of sections
39 [348.253 to 348.266] 348.250 to 348.275 this interest and make corresponding
40 distributions thereto in the event the qualified economic development
41 organization holding such interest is dissolved or ceases to do business for a
42 period of one year or more;

43 (7) "Qualified investment", any investment of seed capital, start-up
44 capital, or follow-up capital in any commercial activity located in Missouri;

45 (8) "Seed capital", capital provided to a commercial activity located in
46 Missouri for research, development and precommercialization activities to prove
47 a concept for a new product or process or service, and for activities related
48 thereto;

49 (9) "Start-up capital", capital provided to a commercial activity located in
50 Missouri for use in preproduction product development or service development or
51 initial marketing thereof, and for activities related thereto;

52 (10) "State tax liability", any state tax liability incurred by a taxpayer
53 under the provisions of chapters 143, 147 and 148, exclusive of the provisions
54 relating to the withholding of tax as provided for in sections 143.191 to 143.265
55 and related provisions;

56 (11) "Uninvested capital", the amount of any distribution, other than of
57 earnings, by a qualified fund made within five years of the issuance of a
58 certificate of tax credit as provided by sections 348.300 to 348.318; or the portion
59 of all qualified contributions to a qualified fund which are not invested as
60 qualified investments within five years of the issuance of a certificate of tax credit
61 as provided by sections 348.300 to 348.318 to the extent that the amount not so
62 invested exceeds ten percent of all such qualified contributions.

2 [348.253. 1. The Missouri technology corporation may
3 contract with not-for-profit organizations to carry out the
4 provisions of sections 348.251 to 348.275. By entering into such
5 contracts, the corporation shall attempt to achieve the following
6 objectives:

7 (1) The establishment of a research alliance which shall
8 advance technology development, as defined in subdivision (3) of
9 section 348.251. The corporation, in this capacity, shall have the
10 authority to contract directly with centers for advanced technology,
as established by section 348.272, and other not-for-profit entities.

11 In proceeding with this objective, the corporation and centers for
12 advanced technology shall utilize the results of targeted industry
13 studies commissioned by the department of economic development;

14 (2) Technology commercialization, as defined in subdivision
15 (2) of section 348.251;

16 (3) The establishment of a finance corporation to assist in
17 the implementation of section 348.261; and

18 (4) The enhancement of technology application, as defined
19 in subdivision (1) of section 348.251.

20 2. Any contract signed between the corporation and any
21 not-for-profit organization, including innovation centers as defined
22 in section 348.271, shall require that the not-for-profit organization
23 must provide at least one-hundred-percent match for any funding
24 received from the corporation through the technology investment
25 fund, as established in section 348.264.]

Section B. Section A of this act relating to science and innovation shall
2 not become effective except upon the passage and approval by signature of the
3 governor only of senate bill no. 8 relating to taxation and enacted during the first
4 extraordinary session of first regular session of the ninety-sixth general assembly.

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Missouri Governor Jay Nixon's News Release

October 21, 2011

Gov. Nixon signs MOSIRA bill to spark science and innovation investment in Missouri

JEFFERSON CITY - Gov. Jay Nixon today signed **Senate Bill 7**, the Missouri Science and Innovation Reinvestment Act (**MOSIRA**), passed by the General Assembly during the special session. Passage of the MOSIRA bill was one of the key elements in Gov. Nixon's call for a special session, and he praised the bill as an important tool to create the jobs of the future in Missouri.

"Many of the jobs and careers of the future will be created by emerging high-tech companies, and we need to encourage investment by these businesses here in Missouri," Gov. Nixon said. "The MOSIRA bill will be a valuable tool to encourage more start-up companies in science and technology to join what is an already growing area for the Show-Me State and our economy. Through MOSIRA, that continued growth will generate even more expansion in research and technology."

MOSIRA would create a funding source to spark growth in research and technology enterprises by capturing a small percentage of the growth in state revenue over a base year (Fiscal Year 2010) from a designated group of Missouri science and innovation companies. The Missouri Technology Corporation (MTC) will administer the MOSIRA funds.

MTC will reinvest the MOSIRA funding through loans and other means to generate further economic growth in the science and innovation industry sectors, with emphasis on biotechnology and life sciences. Funding will be reinvested in a wide range of programs designed to create jobs, nurture start-ups, and bring science and technology companies to the state.

Senate Bill 7 contains a clause that requires its effective date be contingent on the passage of an unrelated bill. Contingency clauses contained in legislation have been voided in the past, and ultimately a court may have to determine the effect, if any, of the contingency clause contained in Senate Bill 7. With the signing of the bill, the State will initiate steps toward the implementation of Senate Bill 7.



Missouri Governor Jay Nixon's News Release

November 9, 2011

Act will encourage science and innovation investment in Missouri, Governor says

Gov. Nixon joined by business leaders in Kansas City for MOSIRA bill-signing ceremony

KANSAS CITY, Mo. - Gov. Jay Nixon was in Kansas City today at MRIGlobal for a ceremonial signing of Senate Bill 7, the Missouri Science and Innovation Reinvestment Act (MOSIRA), passed by the General Assembly during the special session. Gov. Nixon, joined by local business and bioscience leaders, praised the bill as an important tool to create the jobs of the future in Missouri.

"Since the first day of my administration, we have pledged that Missouri would embrace science and technology to create the jobs and businesses that would sustain us far into the 21st Century," Gov. Nixon said. "That's why we have worked to promote MOSIRA as a powerful tool that could both strengthen our economy, and expand our civic capacity. The passage of MOSIRA provides Missouri with a 25-year growth strategy, focusing on high-growth industries in science and technology.

"MOSIRA will help us leverage our natural assets, from our low energy costs and central location, to our outstanding high-tech workforce and our heritage of agricultural innovation," the Governor said. "By investing in science and innovation, the possibilities for discovery, growth and progress are endless."

MOSIRA will create a funding source to spark growth in research and technology enterprises by capturing a small percentage of the growth in state revenue over a base year (Fiscal Year 2010) from a designated group of Missouri science and innovation companies. The Missouri Technology Corporation (MTC) will administer the MOSIRA funds.

MTC will reinvest the MOSIRA funding through loans and other means to generate further economic growth in the science and innovation industry sectors, with emphasis on biotechnology and life sciences. Funding will be reinvested in a wide range of programs designed to create jobs, nurture start-ups, and bring science and technology companies to the state.

The Governor held the signing ceremony at MRIGlobal, an independent, not-for-profit research center founded in 1944. As one of the nation's leading research institutes, MRIGlobal conducts programs in the areas of national security and defense, biosciences, energy and the environment, agriculture and food safety, and engineering and infrastructure.

Senate Bill 7 contains a clause stating that its effective date is contingent on the passage of an unrelated bill. Gov. Nixon said he will work with the General Assembly during the 2012 legislative session for a simple fix to eliminate any uncertainty caused by that language.

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MISSOURI GOVERNOR'S OFFICE
KANSAS CITY, MISSOURI 64108
TO THE GOVERNOR
FROM THE SECRETARY OF STATE
SENATE BILL 7

