

MOSIRA Made Eas(ier)

(Prepared 09/28/2011 by Missouri First, Inc.)

(Note: Blue text is editorial, back or red is source text from the bill or the Constitution.)

What is MOSIRA?

- **"Missouri Science and Innovation Reinvestment Act"**
- **SB 7 of the 2011 First Extraordinary Session of the Missouri General Assembly**
- *COMMENT: This bill escaped some scrutiny due to the attention paid to the China Hub bill. Most of the concerns raised about government's role in the market, including constitutional issues, apply to both bills, however.*

Summary

- *COMMENT: MOSIRA is a classic example of mercantilism. It uses public resources derived from state and federal sources to supply special privilege to some private parties. MOSIRA interferes with the free market which typically results in misallocation of resources. It also empowers the state, agents of the state, and their friends. Thus, it promotes statism.*

What are the stated goals of MOSIRA?

- *COMMENT: The clear goal is to use public resources to provide an advantage for some businesses in their private, for profit endeavors. Any competitive advantage will be over other businesses IN the state as well as outside of Missouri.*
- **348.256.2** –
 - To make Missouri **businesses**, institutions, and universities **more competitive and increase their likelihood of success**;
 - to support and enhance local and regional strategies and initiatives that capitalize on the unique science and innovation assets across the state;
 - to make Missouri a highly desirable state in which to conduct, facilitate, support, fund, and perform science and innovation research, development, and **commercialization**; to facilitate and effect the creation, attraction, retention, growth, and enhancement of both **existing and new science and innovation companies** in the state;
 - to make Missouri a national and international leader in economic activity based on science and innovation; to enhance workforce development;
 - to create and retain quality jobs; to advance scientific knowledge; and to improve the quality of life for the citizens of the state of Missouri in both urban and rural communities.

How is it administered?

- *COMMENT: The governor has an inordinate level of influence over the make-up of the board which ultimately controls the flow of a lot of money and the choices of who will have market advantages.*
- **196.1115.3** – The **Missouri technology corporation**, established under section 348.251, shall serve as the administrative agent for the **life sciences research board**.
- **The 15 Directors of the Missouri Technology Corporation are selected by:**
 - The governor shall annually appoint one of the Board members to be Chairman.
 - The director of the department of economic development, or the director's designee;
 - The president of the University of Missouri system, or the president's designee;
 - A member of the state senate, appointed by the president pro tem of the senate;
 - A member of the house of representatives, appointed by the speaker of the house;
 - Eleven members appointed by the governor, with the advice and consent of the senate

How is it funded?

- *COMMENT: The most notable new funding mechanism is a mandated transfer of funds General Revenue (subject to appropriations) equal to 6% of the increase in gross wages paid in a wide array of industries from petroleum, to fertilizer manufacturing, to health care.*
 - *There is no specific relationship between this increase in gross wages and the wages paid by companies receiving subsidies. (It is NOT simply a return of a portion of their own payroll expense.)*
 - *There is no requirement that such increase in gross wages result from new investments in or success of the subsidized industries themselves.*
 - *Existing businesses could end up, in effect, subsidizing new competitors. For instance, an existing manufacturer of laboratory equipment which is experiencing a growth in gross wages will trigger increased appropriations to the Fund. The Missouri Technology Corporation could then decide to provide capitalization to an upstart or existing competitor.*
 - *Although the transfer of the “Applicable percentage” funds “subject to appropriation”, such appropriation could be construed by the courts to be mandatory and not subject to real legislative oversight.*
- *Funding can come from virtually any other source, including federal and state dollars, including those appropriated from General Revenue in addition to the above mentioned transfer from General Revenue.*
- **348.264** – There is hereby established in the state treasury a **special fund** to be known as the "**Missouri Science and Innovation Reinvestment Fund**", previously established as the Missouri Technology Investment Fund in section 348.264, which shall consist of
 - **all moneys which may be appropriated to it by the general assembly based on the applicable percentage of the amount by which science and innovation employees' gross wages for the year exceeds the base year gross wages pursuant to section 348.265;**
 - **other funds appropriated to it by the general assembly**, and also any gifts, contributions, grants or bequests received from federal, private or other sources.
- **348.265.2** – Notwithstanding section 23.250 to the contrary, for each of the twenty-five funding years, beginning July 1, 2012, **subject to appropriation**, the director of revenue **shall transfer** to the Missouri science and innovation reinvestment fund an amount not to exceed an amount equal to the product of the **applicable percentage** multiplied by **an amount equal to the increase in aggregate science and innovation employees' gross wages** for the prior fiscal year, over the base year gross wages.

- **348.251.1(1)** – "Applicable percentage", **six percent** for the fiscal year beginning July 1, 2012, and the next fourteen consecutive fiscal years; **five percent** for the immediately subsequent five fiscal years; and **four percent** for the immediately subsequent five fiscal years;
- **348.251.1(4)** – "Base year gross wages", **gross wages paid** by science and innovation companies to science and innovation employees during **fiscal year ending June 30, 2010**; **348.261.1(15)** – Contract for and to **accept** any gifts, grants, and loans of funds, property, or any other aid in any form from the **federal government, the state, any state agency, or any other source**, or any combination thereof, and to comply with the provisions of the terms and conditions thereof;
 - Moneys for business modernization programs, technology application programs, technology commercialization programs and technology development programs established pursuant to the provisions of sections 348.250 to 348.275 **shall be available from appropriations made by the general assembly** from the Missouri [technology investment] science and innovation reinvestment fund. Any moneys remaining in the Missouri [technology investment] science and innovation reinvestment fund at the end of any fiscal year shall not lapse to the general revenue fund, as provided in section 33.080, but shall remain in the Missouri [technology investment] science and innovation reinvestment fund.
- **348.261.2** – The corporation shall endeavor to maximize the amount of leveraging of nonstate resources, including **public and private**, cash and in-kind, attained with its investments, **grants**, loans, or other forms of support. In the case of investments, grants, loans, or other forms of support that emphasize or are specifically intended to impact a particular Missouri county, municipality, or other geographic subdivision of the state, or are otherwise local in nature, the corporation shall give consideration and weight to local matching funds and other matching resources, public and private.

Who benefits from MOSIRA?

- *COMMENT: A broad array of private for-profit businesses, not-for-profit organizations, and government entities (such as universities) may receive subsidies from MOSIRA.*
 - *The predominant stated purpose is to enhance private industry.*
- **348.265.4** – **Funding** generated by the provisions of this section **shall be expended** by the corporation to further **its purposes** as specified in section 348.256.
- **348.256.**
 - 1. The articles of incorporation [and], bylaws, and methods of operation of the Missouri technology corporation shall [provide that:] be consistent with the provisions of sections 348.250 to 348.275.
 - 2. The purposes of the corporation are to contribute to the strengthening of the economy of the state through the development of science and [technology] innovation, to promote the modernization of Missouri businesses by supporting the transfer of science, technology and quality improvement methods to the workplace[, and]; to **enhance the productivity and modernization of Missouri businesses** by providing leadership in the establishment of methods of technology application, technology commercialization and technology development; to make Missouri businesses, institutions, and universities more competitive and **increase their likelihood of success**; to support and enhance local and regional strategies and initiatives that capitalize on the unique science and innovation assets across the state; to make Missouri a highly desirable state in which to conduct, facilitate, support, fund, and perform science and innovation research, development, and commercialization; to **facilitate** and effect the **creation, attraction, retention, growth, and enhancement of both existing and new science and innovation companies** in the state; to make Missouri a national and international leader in economic activity based on science and innovation; to enhance workforce development; to create and retain quality jobs; to advance scientific knowledge; and to improve the quality of life for the citizens of the state of Missouri in both urban and rural communities.

- **348.261.1** – The corporation shall **have all of the powers** necessary or convenient **to carry out the purposes** and provisions of sections 348.250 to 348.275, including the powers as specified therein, and without limitation, the power to:
 - (18) **Expend any and all funds** from the Missouri science and innovation reinvestment fund and all other assets and resources of the corporation for the exclusive purpose of **fulfilling any purpose, power,** or duty of the corporation under sections 348.250 to 348.275, including but not limited to implementing the powers, purposes, and duties of the corporation as enumerated in this section;
 - (20) In carrying out any activities authorized by sections 348.250 to 348.275, the corporation **provides appropriate assistance,** including the making of investments, **grants, and loans,** and providing time of employees, to any taxpayer, governmental body, or agency, insurer, university, or college of the state, **or any other entity,** whether or not any such taxpayer, governmental body or agency, insurer, university, or college of the state, or any other entity, is owned or controlled in whole or in part, directly or indirectly, by the corporation.

Can MOSIRA be used to fund unethical research?

- *COMMENT: Nothing in the MOSIRA bill prohibits the use of the subsidies the act defines from being used for embryonic stem cell research or cloning.*
 - *The “Dixon Amendment” merely requires the reporting of the names of recipient to the legislature prior to the release of funds. This reporting requirement might actually exasperate any subsequent legislative effort to restrict funding for what it considers unethical research, since the Constitution clearly prohibits the restriction of funds “designated for purposes other than stem cell research” “as a means of inhibiting lawful stem cell research”.*
 - *In other words, if the Missouri Technology Corporation designates or makes “eligible”, funds to a company and that company's name is then reported to the General Assembly, as is required by MOSIRA, and the General Assembly then determines that the company is involved in unethical research, a legislative withholding of funds from that company would likely be considered unconstitutional.*
 - *It may be that the only way to prevent the use of public funds for embryonic stem cell research and cloning might be to make sure it is never eligible in the first place.*

What are the accountability measures?

- *COMMENT: As noted above, the Dixon amendment may actually provide “cover” for misuse of Funds. All it requires is the reporting of the name of a proposed recipient of funds. Another provision specifically protects recipients of funds from reporting requirements that might disclose proprietary information – the sort of information which may be needed to expose unethical research.*
 - *There is very little apparent accountability, if any.*
- **348.263.1** – Except as otherwise provided in sections 348.250 to 348.275, the corporation shall be subject to requirements applicable to governmental bodies and records contained in sections 610.010 to 610.225.
- **348.263.1** – In addition to the exceptions available under sections 610.010 to 610.225, the records of the corporation **shall not be subject** to the provisions of sections 610.010 to 610.225, when, upon determination by the corporation, the disclosure of the information in the records would be harmful to the competitive position of the corporation and such records contain: (List of various types of proprietary information which could include the specific nature of research they are conducting.)

What pro-life amendments were offered during the perfection process?

- *COMMENT: Rupp (Senate) and Asbury (House) Amendment (Offered on floor of senate, but Sen. Dixon offered a substitute, which was adopted.):*
- **(Rupp / Asbury amendment)** – “348.275. 1. Public funds utilized under the provisions of sections 348.250 to 348.275 shall not be expended, paid, or granted to or on behalf of an existing or proposed **research project** that involves abortion services, human cloning, or prohibited human research as defined in section 196.1127.”
 - *COMMENT: This amendment does not violate the provisions of Art. III § 38(d)5 of the Missouri Constitution. Which reads:*
 - *Art. III § 38(d)5. – To ensure that no governmental body or official arbitrarily restricts funds designated for purposes other than stem cell research or stem cell therapies and cures as a means of inhibiting lawful stem cell research or stem cell therapies and cures, no state or local governmental body or official shall eliminate, reduce, deny, or withhold any public funds provided or eligible to be provided to a person that (i) lawfully conducts stem cell research or provides stem cell therapies and cures, allows for such research or therapies and cures to be conducted or provided on its premises, or is otherwise associated with such research or therapies and cures, but (ii) receives or is eligible to receive such public funds for purposes other than such stem cell-related activities, on account of, or otherwise for the purpose of creating disincentives for any person to engage in or otherwise associate with, or preventing, restricting, obstructing, or discouraging, such stem cell-related activities.*
- **The Bob Dixon amendment: 348.261.7** – At least ten days prior to releasing funds to a recipient of financial assistance pursuant to the powers established in this section, the corporation shall submit to the president pro tem of the senate and the speaker of the house of representatives the name of the recipient of such assistance, and post such information on the corporation’s website.
 - *COMMENT: Nothing in MOSIRA makes it illegal to do embryonic stem cell research or cloning. This measure.*
- **Constitutional Issues** –
 - *COMMENT: The subsidies provided for in the MOSIRA bill appear to be more blatantly unconstitutional than most of the mercantilistic bills recently considered, including the China Hub bill.*
 - *One legal argument used to support the constitutionality of bills which include Tax Credits is that the credits don't constitute “public money”, since they work against taxes that have not yet been collected.*
 - *The subsidies provided by MOSIRA are monies collected by the state and appropriated to the Missouri Science and Innovation Reinvestment Fund, which in turn distributes the subsidies. Clearly these are public funds.*

- **Constitutional Provisions violated when MOSIRA provides subsidies to private industry.**
 1. Article I, Section 2 of the Missouri Constitution by denying equal protection under the laws of Missouri through its treatment of Missouri businesses and other taxpayers differently based on the geographic region and industries they serve. See 348.251(12)(b), 348.261.2
 2. Article I, Section 2 of the Missouri Constitution by providing a competitive advantage to some citizens through state supplied subsidies for the development of new enterprises at the expense of citizens who have already made investments in projects which compete for the same customers or resource. The result is state sponsored diminution of their property and the state's failure to “give security” to the “gains of their own industry”.
 3. Article I, Section 2 of the Missouri Constitution by providing preferential and unequal treatment to some citizens, who would receive state supplied subsidies for the development of new enterprises, over other citizens who might otherwise seek development of new enterprises in competition with them in an open and free marketplace.
 4. Article III, Section 36 of the Missouri Constitution, because it has the effect of “divert[ing]” money from the treasury independent of the appropriation process. (This point may be debatable.)
 5. Article III, Section 38(a) of the Missouri Constitution, which states that “The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation...”
 6. Article III, Section 39(5) of the Missouri Constitution because it has the effect of “releas[ing] or extinguish[ing]... without consideration... the indebtedness, liability or obligation of... [a] corporation or individual”. Future possible NET returns to the state have not been demonstrated and the mere hope of such returns does not constitute “consideration”.
 7. Article III, Section 40 prohibition of “special laws” in several ways, notably those in Section 40(30) which forbids the General Assembly from passing a local or special law where a general law can be made applicable.