

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILLS NOS. 787 & 804

97TH GENERAL ASSEMBLY

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Reported from the Committee on Progress and Development, April 1, 2014, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

5551S.04C

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## AN ACT

To repeal sections 536.010 and 546.710, RSMo, and to enact in lieu thereof two new sections relating to the capital sentencing procedures and protocols commission, with an emergency clause.

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

Section A. Sections 536.010 and 546.710, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 536.010 and 546.710, to  
3 read as follows:

536.010. For the purpose of this chapter:

2 (1) "Affected small business" or "affects small business" means any  
3 potential or actual requirement imposed upon a small business or minority small  
4 business through a state agency's proposed or adopted rule that will cause direct  
5 and significant economic burden upon a small business or minority small  
6 business, or that is directly related to the formation, operation, or expansion of  
7 a small business;

8 (2) "Agency" means any administrative officer or body existing under the  
9 constitution or by law and authorized by law or the constitution to make rules or  
10 to adjudicate contested cases, except those in the legislative or judicial branches;

11 (3) "Board" means the small business regulatory fairness board, except  
12 when the word is used in section 536.100;

13 (4) "Contested case" means a proceeding before an agency in which legal  
14 rights, duties or privileges of specific parties are required by law to be determined  
15 after hearing;

16 (5) The term "decision" includes decisions and orders whether negative or  
17 affirmative in form;

18 (6) "Rule" means each agency statement of general applicability that

19 implements, interprets, or prescribes law or policy, or that describes the  
20 organization, procedure, or practice requirements of any agency. The term  
21 includes the amendment or repeal of an existing rule, but does not include:

22 (a) A statement concerning only the internal management of an agency  
23 and which does not substantially affect the legal rights of, or procedures available  
24 to, the public or any segment thereof;

25 (b) A declaratory ruling issued pursuant to section 536.050, or an  
26 interpretation issued by an agency with respect to a specific set of facts and  
27 intended to apply only to that specific set of facts;

28 (c) An intergovernmental, interagency, or intraagency memorandum,  
29 directive, manual or other communication which does not substantially affect the  
30 legal rights of, or procedures available to, the public or any segment thereof;

31 (d) A determination, decision, or order in a contested case;

32 (e) An opinion of the attorney general;

33 (f) Those portions of staff manuals, instructions or other statements  
34 issued by an agency which set forth criteria or guidelines to be used by its staff  
35 in auditing, in making inspections, in settling commercial disputes or negotiating  
36 commercial arrangements, or in the selection or handling of cases, such as  
37 operational tactics or allowable tolerances or criteria for the defense, prosecution,  
38 or settlement of cases, when the disclosure of such statements would enable law  
39 violators to avoid detection, facilitate disregard of requirements imposed by law,  
40 or give a clearly improper advantage to persons who are in an adverse position  
41 to the state;

42 (g) A specification of the prices to be charged for goods or services sold by  
43 an agency as distinguished from a license fee, or other fees;

44 (h) A statement concerning only the physical servicing, maintenance or  
45 care of publicly owned or operated facilities or property;

46 (i) A statement relating to the use of a particular publicly owned or  
47 operated facility or property, the substance of which is indicated to the public by  
48 means of signs or signals;

49 (j) A decision by an agency not to exercise a discretionary power;

50 (k) A statement concerning only inmates of an institution under the  
51 control of the department of corrections, **except for statements authorized**  
52 **pursuant to section 546.710**, and human resources or the division of youth  
53 services, students enrolled in an educational institution, or clients of a health  
54 care facility, when issued by such an agency;

55 (l) Statements or requirements establishing the conditions under which  
56 persons may participate in exhibitions, fairs or similar activities, managed by the  
57 state or an agency of the state;

58 (m) Income tax or sales forms, returns and instruction booklets prepared  
59 by the state department of revenue for distribution to taxpayers for use in  
60 preparing tax returns;

61 (7) "Small business" means a for-profit enterprise consisting of fewer than  
62 one hundred full- or part-time employees;

63 (8) "State agency" means each board, commission, department, officer or  
64 other administrative office or unit of the state other than the general assembly,  
65 the courts, the governor, or a political subdivision of the state, existing under the  
66 constitution or statute, and authorized by the constitution or statute to make  
67 rules or to adjudicate contested cases.

546.710. 1. Upon such convicted offender being brought before the court,  
2 they shall proceed to inquire into the facts, and if no legal reasons exist against  
3 the execution of sentence, such court shall issue a warrant to the director of the  
4 department of corrections, for the execution of the prisoner at the time therein  
5 specified, which execution shall be obeyed by the director accordingly.

6 **2. A capital sentencing procedures and protocols commission is**  
7 **hereby created. The commission shall be composed of eleven members**  
8 **who shall be the following:**

9 **(1) The attorney general or his or her designee;**

10 **(2) A current or retired public defender appointed by the public**  
11 **defender commission who has been counsel of record on cases where**  
12 **the death penalty was sought by the state;**

13 **(3) A sitting or retired prosecuting attorney appointed by the**  
14 **Missouri Association of Prosecuting Attorneys;**

15 **(4) An active member of the Missouri Bar Association appointed**  
16 **by the Missouri Association of Criminal Defense Lawyers;**

17 **(5) A physician licensed by the board of healing arts appointed**  
18 **by the president pro tempore of the senate;**

19 **(6) A physician licensed by the board of healing arts appointed**  
20 **by the minority floor leader of the senate;**

21 **(7) A pharmacist licensed by the board of pharmacy appointed**  
22 **by the speaker of the house;**

23 **(8) A pharmacist licensed by the board of pharmacy appointed**

24 by the minority floor leader of the house;

25 (9) Two judges appointed by the supreme court;

26 (10) A person appointed by the governor, where the appointment  
27 has received the advice and consent of the senate, who, by the person's  
28 skills, experience, and background, would be a representative of crime  
29 victims on the commission.

30 3. A majority of the members of the commission shall constitute  
31 a quorum. The members of the commission shall serve without  
32 compensation, but shall be entitled to reimbursement for reasonable  
33 expenses. Personnel from the legislative research and senate research  
34 divisions of the general assembly shall provide staffing and personnel  
35 to the commission.

36 4. (1) The capital sentencing procedures and protocols  
37 commission shall have sole and exclusive authority to determine  
38 procedures and protocols for the administration of the death penalty.

39 (2) The capital sentencing procedures and protocols commission  
40 shall not have authority to make policy decisions regarding whether  
41 the death penalty should be administered.

42 (3) The capital sentencing procedures and protocols commission  
43 shall not have the authority to disclose current or former members of  
44 an execution team.

45 (4) All actions taken by the capital sentencing procedures and  
46 protocols commission in establishing procedures and protocols for the  
47 administration of the death penalty shall be conducted through the  
48 administrative rulemaking process pursuant to chapter 536. Any rule  
49 or portion of a rule, as that term is defined in section 536.010 that is  
50 created under the authority delegated in this section shall become  
51 effective only if it complies with and is subject to all of the provisions  
52 of chapter 536 and, if applicable, section 536.028. This section and  
53 chapter 536 are nonseverable and if any of the powers vested with the  
54 general assembly under chapter 536 to review, to delay the effective  
55 date, or to disapprove and annul a rule are subsequently held  
56 unconstitutional, then the grant of rulemaking authority and any rule  
57 proposed or adopted after the effective date of this section shall be  
58 invalid and void.

59 (5) During its first year of existence the capital sentencing  
60 procedures and protocols commission shall meet at least quarterly and

61 shall, no later than one year after the effective date of this section,  
62 draft and promulgate one or more administrative rules establishing  
63 procedures and protocols for the administration of the death  
64 penalty. Such administrative rules shall include the drugs that may be  
65 used by the execution team to administer lethal injection. For each  
66 succeeding year, the commission shall meet at least annually to review  
67 and, if appropriate, update or amend any rules.

68 (6) The death penalty shall not be administered by the state of  
69 Missouri until the capital sentencing procedures and protocols  
70 commission has promulgated administrative rules as authorized by this  
71 section or until one year after the effective date of this section.

Section B. Because of the need to update capital sentencing procedures  
2 and protocols, section A of this act is deemed necessary for the immediate  
3 preservation of the public health, welfare, peace and safety, and is hereby  
4 declared to be an emergency act within the meaning of the constitution, and  
5 section A of this act shall be in full force and effect upon its passage and  
6 approval.

Bill ✓

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