

FIRST REGULAR SESSION

HOUSE BILL NO. 387

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GAMBARO, JOHNSON (61), KENNEDY,
BOYKINS AND FRASER (Co-sponsors).

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TED WEDEL, Chief Clerk

0814L.011

AN ACT

To repeal sections 447.700 and 447.708, RSMo 2000, relating to land development, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 447.700 and 447.708, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 447.700 and 447.708, to read as follows:
447.700. As used in sections 447.700 to 447.718, the following terms mean:

(1) "Abandoned property", real property previously used for, or which has the potential to be used for, commercial or industrial purposes which reverted to the ownership of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of foreclosure; or a privately owned property endorsed by the city, or county if the property is not in a city, for inclusion in the program which will be transferred to a person other than the potentially responsible party as defined in chapter 260, RSMo, and has been vacant for a period of not less than three years from the time an application is made to the department of economic development;

(2) "Allowable cost", all or part of the costs of project facilities, including the costs of acquiring the property, relocating any remaining occupants, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping or furnishing project facilities, demolition, site clearance and preparation, **backfill**, supplementing and relocating public capital improvements or utility facilities, designs, plans, specifications, surveys, studies and estimates of costs, expenses necessary or incident to determining the feasibility or practicability of assisting

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

17 an eligible project or providing project facilities, architectural, engineering and legal service fees
18 and expenses, the costs of conducting any other activities as part of a voluntary remediation and
19 such other expenses as may be necessary or incidental to the establishment or development of
20 an eligible project and reimbursement of moneys advanced or applied by any governmental
21 agency or other person for allowable costs. **Allowable costs shall also include the demolition
22 and reconstruction of any building or structure which is not the object of remediation as
23 defined in section 260.565, RSMo, but which is located on the site of an abandoned or
24 underutilized property approved for financial assistance pursuant to sections 447.702 to
25 447.708, provided that any such demolition is contained in a redevelopment plan approved
26 by the director of the department of economic development and the municipal or county
27 government having jurisdiction in the area in which the project is located;**

28 (3) "Applicant", the person that submits an application for consideration of a project or
29 location or real property for financial, tax credit or other assistance pursuant to sections 447.700
30 to 447.718; an applicant may not be any party who intentionally or negligently caused the release
31 or potential release of hazardous substances at the eligible project as that term is defined pursuant
32 to chapter 260, RSMo;

33 (4) "Eligible project", abandoned or underutilized property to be acquired, established,
34 expanded, remodeled, rehabilitated or modernized for industry, commerce, distribution or
35 research, or any combination thereof, the operation of which, alone or in conjunction with other
36 facilities, will create new jobs or preserve existing jobs and employment opportunities, attract
37 new businesses to the state, prevent existing businesses from leaving the state and improve the
38 economic welfare of the people of the state. The term "eligible project", without limitation,
39 includes voluntary remediation conducted pursuant to sections 260.565 to 260.575, RSMo. To
40 be an "eligible project" pursuant to sections 447.700 to 447.718, the obligations of the
41 prospective applicant and the governmental agency shall be defined in a written agreement
42 signed by both parties. The facility, when completed, shall be operated in compliance with
43 applicable federal, state and local environmental statutes, regulations and ordinances. An
44 "eligible project" shall be determined by consideration of the entire project. The definition or
45 identification of an "eligible project" shall not be segmented into parts to separate commercial
46 and industrial uses from residential uses. **Any property immediately adjacent to any
47 abandoned or underutilized property may also be an "eligible project" pursuant to section
48 447.700 to 447.718, provided that the abandoned or underutilized property otherwise meets
49 the qualifications of this subdivision;**

50 (5) "Financial assistance", direct loans, loan guarantees, and grants pursuant to sections
51 447.702 to 447.706; and tax credits, inducements and abatements pursuant to section 447.708;

52 (6) "Governmental action", any action by a state, county or municipal agency relating

53 to the establishment, development or operation of an eligible project and project facilities that
54 the governmental agency has authority to take or provide for the purpose under law, charter or
55 ordinance, including but not limited to, actions relating to contracts and agreements, zoning,
56 building, permits, acquisition and disposition of property, public capital improvements, utility
57 and transportation service, taxation, employee recruitment and training, and liaison and
58 coordination with and among governmental agencies;

59 (7) "Governmental agency", the state, county and municipality and any department,
60 division, commission, agency, institution or authority, including a municipal corporation,
61 township, and any agency thereof and any other political subdivision or public corporation; the
62 United States or any agency thereof; any agency, commission or authority established pursuant
63 to an interstate compact or agreement and any combination of the above;

64 (8) "Person", any individual, firm, partnership, association, limited liability company,
65 corporation or governmental agency, and any combination thereof;

66 (9) "Project facilities", buildings, structures and other improvements and equipment and
67 other property or fixtures, excluding small tools, supplies and inventory, and public capital
68 improvements;

69 (10) "Public capital improvements", capital improvements or facilities owned by a
70 governmental agency and which such agency has authority to acquire, pay the costs of, maintain,
71 relocate or operate, or to contract with other persons to have the same done, including but not
72 limited to, highways, roads, streets, electrical, gas, water and sewer facilities, railroad and other
73 transportation facilities, and air and water pollution control and solid waste disposal facilities;

74 (11) "Underutilized", real property of which less than thirty-five percent of the
75 commercially usable space of the property and improvements thereon, are used for their most
76 commercially profitable and economically productive use; or property that was used by the state
77 of Missouri as a correctional center for a period of at least one hundred years and which requires
78 environmental remediation before redevelopment can occur, if approval from the general
79 assembly has been given for any improvements to, or remediation, lease or sale of, said property;

80 (12) "Voluntary remediation", an action to remediate hazardous substances and
81 hazardous waste pursuant to sections 260.565 to 260.575, RSMo.

447.708. 1. For eligible projects, the director of the department of economic
2 development, with notice to the directors of the departments of natural resources and revenue,
3 and subject to the other provisions of sections 447.700 to 447.718, may not create a new
4 enterprise zone but may decide that a prospective operator of a facility being remedied and
5 renovated pursuant to sections 447.700 to 447.718 may receive the tax credits and exemptions
6 pursuant to sections 135.100 to 135.150, RSMo, and sections 135.200 to [135.256] **135.257**,
7 RSMo. The tax credits allowed pursuant to this subsection shall be used to offset the tax

8 imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to
9 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise
10 imposed by chapter 148, RSMo. For purposes of this subsection:

11 (1) For receipt of the ad valorem tax abatement pursuant to section 135.215, RSMo, the
12 eligible project must create at least ten new jobs or retain businesses which supply at least
13 twenty-five existing jobs. The city, or county if the eligible project is not located in a city, must
14 provide ad valorem tax abatement of at least fifty percent for a period not less than ten years and
15 not more than twenty-five years;

16 (2) For receipt of the income tax exemption pursuant to section 135.220, RSMo, and tax
17 credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and
18 135.225, RSMo, the eligible project must create at least ten new jobs or retain businesses which
19 supply at least twenty-five existing jobs, or combination thereof. For purposes of sections
20 447.700 to 447.718, the tax credits described in section 135.225, RSMo, are modified as follows:
21 the tax credit shall be four hundred dollars per employee per year, an additional four hundred
22 dollars per year for each employee exceeding the minimum employment thresholds of ten and
23 twenty-five jobs for new and existing businesses, respectively, an additional four hundred dollars
24 per year for each person who is "a person difficult to employ" as defined by section 135.240,
25 RSMo, and investment tax credits at the same amounts and levels as provided in subdivision (4)
26 **of subsection 1** of section 135.225, RSMo;

27 (3) For eligibility to receive the income tax refund pursuant to section 135.245, RSMo,
28 the eligible project must create at least ten new jobs or retain businesses which supply at least
29 twenty-five existing jobs, or combination thereof, and otherwise comply with the provisions of
30 section 135.245, RSMo, for application and use of the refund and the eligibility requirements of
31 this section;

32 (4) The eligible project operates in compliance with applicable environmental laws and
33 regulations, including permitting and registration requirements, of this state as well as the federal
34 and local requirements;

35 (5) The eligible project operator shall file such reports as may be required by the director
36 of economic development or the director's designee;

37 (6) The taxpayer may claim the state tax credits authorized by this subsection and the
38 state income exemption for a period not in excess of ten consecutive tax years. For the purpose
39 of this section, "taxpayer" means an individual proprietorship, partnership or corporation
40 described in section 143.441 or 143.471, RSMo, who operates an eligible project. The director
41 shall determine the number of years the taxpayer may claim the state tax credits and the state
42 income exemption based on the projected net state economic benefits attributed to the eligible
43 project;

44 (7) For the purpose of meeting the new job requirement prescribed in subdivisions (1),
45 (2) and (3) of this subsection, it shall be required that at least ten new jobs be created and
46 maintained during the taxpayer's tax period for which the credits are earned, in the case of an
47 eligible project that does not replace a similar facility in Missouri. "New job" means a person
48 who was not previously employed by the taxpayer or related taxpayer within the twelve-month
49 period immediately preceding the time the person was employed by that taxpayer to work at, or
50 in connection with, the eligible project on a full-time basis. "Full-time basis" means the
51 employee works an average of at least thirty-five hours per week during the taxpayer's tax period
52 for which the tax credits are earned. For the purposes of this section, "related taxpayer" has the
53 same meaning as defined in subdivision (9) of section 135.100, RSMo;

54 (8) For the purpose of meeting the existing job retention requirement, if the eligible
55 project replaces a similar facility that closed elsewhere in Missouri prior to the end of the
56 taxpayer's tax period in which the tax credits are earned, it shall be required that at least
57 twenty-five existing jobs be retained at, and in connection with the eligible project, on a full-time
58 basis during the taxpayer's tax period for which the credits are earned. "Retained job" means a
59 person who was previously employed by the taxpayer or related taxpayer, at a facility similar to
60 the eligible project that closed elsewhere in Missouri prior to the end of the taxpayer's tax period
61 in which the tax credits are earned, within the tax period immediately preceding the time the
62 person was employed by the taxpayer to work at, or in connection with, the eligible project on
63 a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five
64 hours per week during the taxpayer's tax period for which the tax credits are earned;

65 (9) In the case where an eligible project replaces a similar facility that closed elsewhere
66 in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, the
67 owner and operator of the eligible project shall provide the director with a written statement
68 explaining the reason for discontinuing operations at the closed facility. The statement shall
69 include a comparison of the activities performed at the closed facility prior to the date the facility
70 ceased operating, to the activities performed at the eligible project, and a detailed account
71 describing the need and rationale for relocating to the eligible project. If the director finds the
72 relocation to the eligible project significantly impaired the economic stability of the area in
73 which the closed facility was located, and that such move was detrimental to the overall
74 economic development efforts of the state, the director may deny the taxpayer's request to claim
75 tax benefits;

76 (10) Notwithstanding any provision of law to the contrary, for the purpose of this
77 section, the number of new jobs created and maintained, the number of existing jobs retained,
78 and the value of new qualified investment used at the eligible project during any tax year shall
79 be determined by dividing by twelve, in the case of jobs, the sum of the number of individuals

80 employed at the eligible project, or in the case of new qualified investment, the value of new
81 qualified investment used at the eligible project, on the last business day of each full calendar
82 month of the tax year. If the eligible project is in operation for less than the entire tax year, the
83 number of new jobs created and maintained, the number of existing jobs retained, and the value
84 of new qualified investment created at the eligible project during any tax year shall be
85 determined by dividing the sum of the number of individuals employed at the eligible project,
86 or in the case of new qualified investment, the value of new qualified investment used at the
87 eligible project, on the last business day of each full calendar month during the portion of the tax
88 year during which the eligible project was in operation, by the number of full calendar months
89 during such period;

90 (11) For the purpose of this section, "new qualified investment" means new business
91 facility investment as defined and as determined in subdivision (7) of section 135.100, RSMo,
92 which is used at and in connection with the eligible project. "New qualified investment" shall
93 not include small tools, supplies and inventory. "Small tools" means tools that are portable and
94 can be hand held.

95 2. The determination of the director of economic development pursuant to subsection
96 1 of this section, shall not affect requirements for the prospective purchaser to obtain the
97 approval of the granting of real property tax abatement by the municipal or county government
98 where the eligible project is located.

99 3. **(1)** The director of the department of economic development, with the approval of
100 the director of the department of natural resources, may, in addition to the tax credits allowed
101 in subsection 1 of this section, grant a remediation tax credit to the applicant for up to one
102 hundred percent of the costs of materials, supplies, equipment, labor, professional engineering,
103 consulting and architectural fees, permitting fees and expenses, demolition [and], asbestos
104 abatement, and direct utility charges for performing the voluntary remediation activities for the
105 preexisting hazardous substance contamination and releases, including, but not limited to, the
106 costs of performing operation and maintenance of the remediation equipment at the property
107 beyond the year in which the systems and equipment are built and installed at the eligible project
108 and the costs of performing the voluntary remediation activities over a period not in excess of
109 four tax years following the taxpayer's tax year in which the system and equipment were first put
110 into use at the eligible project, provided the remediation activities are the subject of a plan
111 submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to
112 260.575, RSMo.

113 **(2) The director of the department of economic development, with the approval of**
114 **the director of the department of natural resources, shall, in addition to the tax credits**
115 **otherwise allowed in this section, grant a demolition tax credit to the applicant for up to**

116 **one hundred percent of the costs of demolition that are not part of the voluntary**
117 **remediation activities, provided that the demolition is either on the property where the**
118 **voluntary remediation activities are occurring or on any adjacent property, and that the**
119 **demolition is part of a redevelopment plan approved by the municipal or county**
120 **government and the department of economic development.**

121 (3) The amount of remediation **and demolition** tax credits issued shall be limited to the
122 least amount necessary to cause the project to occur, as determined by the director of the
123 department of economic development.

124 (4) The director may, with the approval of the director of natural resources, extend the
125 tax credits allowed for performing voluntary remediation maintenance activities, in increments
126 of three-year periods, not to exceed five consecutive three-year periods. The tax credits allowed
127 in this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding
128 withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed
129 by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. The remediation
130 **and demolition** tax credit may be taken in the same tax year in which the tax credits are received
131 or may be taken over a period not to exceed twenty years.

132 (5) The project facility [is] **shall be** projected to create at least ten new jobs or at least
133 twenty-five retained jobs, or a combination thereof, as determined by the department of
134 economic development, **to be eligible for tax credits pursuant to this section.**

135 (6) No more than seventy-five percent of earned remediation tax credits may be issued
136 when the remediation costs were paid, and the remaining percentage may be issued when the
137 department of natural resources issues a "Letter of Completion" letter or covenant not to sue
138 following completion of the voluntary remediation activities. It shall not include any costs
139 associated with ongoing operational environmental compliance of the facility or remediation
140 costs arising out of spills, leaks, or other releases arising out of the ongoing business operations
141 of the facility.

142 4. In the exercise of the sound discretion of the director of the department of economic
143 development or the director's designee, the tax credits and exemptions described in this section
144 may be terminated, suspended or revoked, if the eligible project fails to continue to meet the
145 conditions set forth in this section. In making such a determination, the director shall consider
146 the severity of the condition violation, actions taken to correct the violation, the frequency of any
147 condition violations and whether the actions exhibit a pattern of conduct by the eligible facility
148 owner and operator. The director shall also consider changes in general economic conditions and
149 the recommendation of the director of the department of natural resources, or his or her designee,
150 concerning the severity, scope, nature, frequency and extent of any violations of the
151 environmental compliance conditions. The taxpayer or person claiming the tax credits or

152 exemptions may appeal the decision regarding termination, suspension or revocation of any tax
153 credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section
154 135.250, RSMo. The director of the department of economic development shall notify the
155 directors of the departments of natural resources and revenue of the termination, suspension or
156 revocation of any tax credits as determined in this section or pursuant to the provisions of section
157 447.716.

158 5. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax
159 credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection
160 1 of this section and the tax credits otherwise allowed in section 135.110, RSMo, or the tax
161 credits, exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and
162 135.245, RSMo, respectively, for the same facility for the same tax period.

163 6. The total amount of the tax credits allowed in subsection 1 of this section may not
164 exceed the greater of:

165 (1) That portion of the taxpayer's income attributed to the eligible project; or

166 (2) One hundred percent of the total business' income tax if the eligible facility does not
167 replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax
168 period in which the tax credits are earned, and further provided the taxpayer does not operate any
169 other facilities besides the eligible project in Missouri; fifty percent of the total business' income
170 tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the
171 end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer
172 does not operate any other facilities besides the eligible project in Missouri; or twenty-five
173 percent of the total business income if the taxpayer operates, in addition to the eligible facility,
174 any other facilities in Missouri. In no case shall a taxpayer operating more than one eligible
175 project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business
176 income in any tax period. That portion of the taxpayer's income attributed to the eligible project
177 as referenced in subdivision (1) of this subsection, for which the credits allowed in sections
178 135.110 and 135.225, RSMo, and subsection 3 of this section, may apply, shall be determined
179 in the same manner as prescribed in subdivision (6) of section 135.100, RSMo. That portion of
180 the taxpayer's franchise tax attributed to the eligible project for which the remediation tax credit
181 may offset, shall be determined in the same manner as prescribed in paragraph (a) of subdivision
182 (6) of section 135.100, RSMo.

183 7. Taxpayers claiming the state tax benefits allowed in subdivisions (2) and (3) of
184 subsection 1 of this section shall be required to file all applicable tax credit applications, forms
185 and schedules prescribed by the director during the taxpayer's tax period immediately after the
186 tax period in which the eligible project was first put into use. Otherwise, the taxpayer's right to
187 claim such state tax benefits shall be forfeited. Unused business facility and enterprise zone tax

188 credits shall not be carried forward but shall be initially claimed for the tax period during which
189 the eligible project was first capable of being used, and during any applicable subsequent tax
190 periods.

191 8. Taxpayers claiming the remediation tax credit allowed in subsection 3 of this section
192 shall be required to file all applicable tax credit applications, forms and schedules prescribed by
193 the director during the taxpayer's tax period immediately after the tax period in which the eligible
194 project was first put into use, or during the taxpayer's tax period immediately after the tax period
195 in which the voluntary remediation activities were performed.

196 9. The recipient of remediation tax credits, for the purpose of this subsection referred to
197 as assignor, may assign, sell or transfer, in whole or in part, the remediation tax credit allowed
198 in subsection 3 of this section, to any other person, for the purpose of this subsection referred to
199 as assignee. To perfect the transfer, the assignor shall provide written notice to the director of
200 the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective,
201 the assignee's name, address and the assignee's tax period and the amount of tax credits to be
202 transferred. The number of tax periods during which the assignee may subsequently claim the
203 tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor
204 previously claimed the credits before the transfer occurred.

205 10. In the case where an operator and assignor of an eligible project has been certified
206 to claim state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section, and
207 sells or otherwise transfers title of the eligible project to another taxpayer or assignee who
208 continues the same or substantially similar operations at the eligible project, the director shall
209 allow the assignee to claim the credits for a period of time to be determined by the director;
210 except that, the total number of tax periods the tax credits may be earned by the assignor and the
211 assignee shall not exceed ten. To perfect the transfer, the assignor shall provide written notice
212 to the director of the assignor's intent to transfer the tax credits to the assignee, the date the
213 transfer is effective, the assignee's name, address, and the assignee's tax period, and the amount
214 of tax credits to be transferred.

215 11. For the purpose of the state tax benefits described in this section, in the case of a
216 corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax
217 liability, such state benefits shall be allowed to the following:

218 (1) The shareholders of the corporation described in section 143.471, RSMo;

219 (2) The partners of the partnership.

220

221 The credit provided in this subsection shall be apportioned to the entities described in
222 subdivisions (1) and (2) of this subsection in proportion to their share of ownership on the last
223 day of the taxpayer's tax period.