

FIRST REGULAR SESSION

HOUSE BILL NO. 781

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GAMBARO AND KENNEDY (Co-sponsors).

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TED WEDEL, Chief Clerk

0815L.011

AN ACT

To repeal sections 447.700, 447.706 and 447.708, RSMo 2000, relating to eligible projects for brownfield remediation, and to enact in lieu thereof three 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Section A. Sections 447.700, 447.706 and 447.708, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 447.700, 447.706 and 447.708, to read as follows: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, **backfilling**, supplementing and relocating public

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

15 capital improvements or utility facilities, designs, plans, specifications, surveys, studies and
16 estimates of costs, expenses necessary or incident to determining the feasibility or practicability
17 of assisting an eligible project or providing project facilities, architectural, engineering and legal
18 service fees and expenses, the costs of conducting any other activities as part of a voluntary
19 remediation and such other expenses as may be necessary or incidental to the establishment or
20 development of an eligible project and reimbursement of moneys advanced or applied by any
21 governmental agency or other person for allowable costs. **Allowable costs shall also include**
22 **the demolition and reconstruction of any building or structure which is not the object of**
23 **remediation as defined in section 260.565, RSMo, but which is located on the site of an**
24 **abandoned or underutilized property approved for financial assistance pursuant to**
25 **sections 447.702 to 447.708, provided that any such demolition is contained in a**
26 **redevelopment plan approved by the director of the department of economic development**
27 **and the local 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 residential purposes**, or any combination thereof, the [operation] **remediation** of
36 which, alone or in conjunction with other [facilities] **properties**, will create new jobs or preserve
37 existing jobs and employment opportunities, attract new businesses to the state, prevent existing
38 businesses from leaving the state and improve the economic welfare of the people of the state.
39 The term "eligible project", without limitation, includes voluntary remediation conducted
40 pursuant to sections 260.565 to 260.575, RSMo. To be an "eligible project" pursuant to sections
41 447.700 to 447.718, the obligations of the prospective applicant and the governmental agency
42 shall be defined in a written agreement signed by both parties. The [facility, when completed,
43 shall be operated] **property, upon completion of remediation activities, shall be maintained**
44 in compliance with applicable federal, state and local environmental statutes, regulations and
45 ordinances. An "eligible project" shall be determined by consideration of the entire project. The
46 definition or identification of an "eligible project" shall [not be segmented into parts to separate]
47 **allow commercial and industrial uses [from] to be mixed with residential uses. Any property**
48 **immediately adjacent to any abandoned or underutilized property may also be an "eligible**
49 **project" pursuant to section 447.700 to 447.718, provided that the abandoned or**
50 **underutilized property otherwise meets the qualifications of this subdivision;**

51 (5) "Financial assistance", direct loans, loan guarantees, and grants pursuant to sections
52 447.702 to 447.706; and tax credits, inducements and abatements pursuant to section 447.708;

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

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

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

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

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

75 (11) "Underutilized", real property of which less than thirty-five percent of the
76 commercially usable space of the property and improvements thereon, are used for their most
77 commercially profitable and economically productive use; **real property designated for**
78 **residential purposes that is no longer fit for human habitation;** or property that was used by
79 the state of Missouri as a correctional center for a period of at least one hundred years and which
80 requires environmental remediation before redevelopment can occur, if approval from the
81 general assembly has been given for any improvements to, or remediation, lease or sale of, said
82 property;

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

447.706. 1. The director of economic development, with the approval of the director of
2 the department of natural resources, subject to other applicable provisions of sections 447.700

3 to 447.718, may issue a grant to a governmental agency for the purpose of paying the allowable
4 costs of public capital improvements needed to cause an eligible project if:

5 (1) The project otherwise qualifies as an eligible project and is economically sound;

6 (2) The project proposed is a cooperative venture between a municipal or county
7 government and a prospective private purchaser of the facility;

8 (3) The prospective purchaser is unable to finance the entire cost of the project through
9 ordinary financial channels upon comparable terms and, further, a lender is unwilling to make
10 the loan even with a loan guarantee pursuant to section 447.704. When completed, the eligible
11 project, **except a project designated for residential purposes**, is projected to create not less
12 than ten new jobs, or shall retain a business which supplies not less than twenty-five existing
13 jobs, or a combination thereof, providing not less than an average of thirty-five hours of
14 employment per week per job. **Eligible projects designated for residential purposes must**
15 **involve construction or rehabilitation of a residential structure projected to be equivalent**
16 **to the median property value of the census tract plus twenty-five percent, upon completion**
17 **of the project.** Such projection shall be made by the department of economic development; and

18 (4) The amount to be issued in a grant shall not exceed one million dollars.

19 2. The determinations of the director of economic development pursuant to subsection
20 1 of this section shall be conclusive for purposes of the validity of a grant agreement signed by
21 the director.

22 3. Grants from the property reuse fund pursuant to this section shall be such as the
23 director of economic development determines to be appropriate and in furtherance of the purpose
24 for which the grants are made. The moneys used in making such grants shall be disbursed from
25 the property reuse fund upon written order of the director of economic development. The
26 director shall give special consideration in setting the required job creation ratios and project
27 locations for project grants that are for voluntary remediation actions.

28 4. The director of economic development shall issue such grants to a governmental
29 agency to administer and direct the expenditure of the funds for public capital improvements.
30 Such grant money shall not be used to hire or pay additional employees of the recipient
31 governmental agency.

32 5. The director of economic development may fix service charges for the making of a
33 property reuse grant. Such charges shall be payable at such times and place and in such amounts
34 and manner as may be prescribed by the director.

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] **purchaser of a**

5 **property** being remedied and renovated pursuant to sections 447.700 to 447.718 may receive
6 the tax credits and exemptions pursuant to sections 135.100 to 135.150, RSMo, and sections
7 135.200 to [135.256] **135.257**, RSMo. The tax credits allowed pursuant to this subsection shall
8 be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by
9 sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the
10 tax otherwise 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,
12 **except those projects designated for residential purposes**, the eligible project must create at
13 least ten new jobs or retain businesses which supply at least twenty-five existing jobs. **In the**
14 **case of a residential property, the eligible project must involve construction or**
15 **rehabilitation of a residential structure projected to be equivalent to or greater than the**
16 **median property value of the census tract plus twenty-five percent upon completion of the**
17 **project.** The city, or county if the eligible project is not located in a city, must provide ad
18 valorem tax abatement of at least fifty percent for a period not less than ten years and not more
19 than twenty-five years;

20 (2) For receipt of the income tax exemption pursuant to section 135.220, RSMo, and tax
21 credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and
22 135.225, RSMo, the eligible project, **except those projects designated for residential**
23 **purposes**, must create at least ten new jobs or retain businesses which supply at least twenty-five
24 existing jobs, or combination thereof. **In the case of a residential property, the eligible**
25 **project must involve construction or rehabilitation of a residential structure projected to**
26 **be equivalent to or greater than the median property value of the census tract plus twenty-**
27 **five percent upon completion of the project.** For purposes of sections 447.700 to 447.718, the
28 tax credits described in section 135.225, RSMo, are modified as follows: the tax credit shall be
29 four hundred dollars per employee per year, an additional four hundred dollars per year for each
30 employee exceeding the minimum employment thresholds of ten and twenty-five jobs for new
31 and existing businesses, respectively, an additional four hundred dollars per year for each person
32 who is "a person difficult to employ" as defined by section 135.240, RSMo, and investment tax
33 credits at the same amounts and levels as provided in subdivision (4) **of subsection 1** of section
34 135.225, RSMo;

35 (3) For eligibility to receive the income tax refund pursuant to section 135.245, RSMo,
36 the eligible project, **except those projects designated for residential purposes**, must create at
37 least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or
38 combination thereof, and otherwise comply with the provisions of section 135.245, RSMo, for
39 application and use of the refund and the eligibility requirements of this section. **In the case of**
40 **a residential property, the eligible project must involve construction or rehabilitation of**

a residential structure projected to be equivalent to or greater than the median property value of the census tract plus twenty-five percent upon completion of the project;

(4) The eligible project [operates] **is maintained or operated** in compliance with applicable environmental laws and regulations, including permitting and registration requirements, of this state as well as the federal and local requirements;

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

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

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

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

(9) In the case where an eligible project replaces a similar facility that closed elsewhere

77 in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, the
78 owner and operator of the eligible project shall provide the director with a written statement
79 explaining the reason for discontinuing operations at the closed facility. The statement shall
80 include a comparison of the activities performed at the closed facility prior to the date the facility
81 ceased operating, to the activities performed at the eligible project, and a detailed account
82 describing the need and rationale for relocating to the eligible project. If the director finds the
83 relocation to the eligible project significantly impaired the economic stability of the area in
84 which the closed facility was located, and that such move was detrimental to the overall
85 economic development efforts of the state, the director may deny the taxpayer's request to claim
86 tax benefits;

87 (10) Notwithstanding any provision of law to the contrary, for the purpose of this
88 section, the number of new jobs created and maintained, the number of existing jobs retained,
89 and the value of new qualified investment used at the eligible project during any tax year shall
90 be determined by dividing by twelve, in the case of jobs, the sum of the number of individuals
91 employed at the eligible project, or in the case of new qualified investment, the value of new
92 qualified investment used at the eligible project, on the last business day of each full calendar
93 month of the tax year. If the eligible project is in operation for less than the entire tax year, the
94 number of new jobs created and maintained, the number of existing jobs retained, and the value
95 of new qualified investment created at the eligible project during any tax year shall be
96 determined by dividing the sum of the number of individuals employed at the eligible project,
97 or in the case of new qualified investment, the value of new qualified investment used at the
98 eligible project, on the last business day of each full calendar month during the portion of the tax
99 year during which the eligible project was in operation, by the number of full calendar months
100 during such period;

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

106 2. The determination of the director of economic development pursuant to subsection
107 1 of this section, shall not affect requirements for the prospective purchaser to obtain the
108 approval of the granting of real property tax abatement by the municipal or county government
109 where the eligible project is located.

110 3. (1) The director of the department of economic development, with the approval of
111 the director of the department of natural resources, may, in addition to the tax credits allowed
112 in subsection 1 of this section, grant a remediation tax credit to the applicant for up to one

113 hundred percent of the costs of materials, supplies, equipment, labor, professional engineering,
114 consulting and architectural fees, permitting fees and expenses, demolition [and], asbestos
115 abatement, and direct utility charges for performing the voluntary remediation activities for the
116 preexisting hazardous substance contamination and releases, including, but not limited to, the
117 costs of performing operation and maintenance of the remediation equipment at the property
118 beyond the year in which the systems and equipment are built and installed at the eligible project
119 and the costs of performing the voluntary remediation activities over a period not in excess of
120 four tax years following the taxpayer's tax year in which the system and equipment were first put
121 into use at the eligible project, provided the remediation activities are the subject of a plan
122 submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to
123 260.575, RSMo.

124 **(2) The director of the department of economic development, with the approval of**
125 **the director of the department of natural resources, shall, in addition to the tax credits**
126 **otherwise allowed in this section, grant a demolition tax credit to the applicant for up to**
127 **one hundred percent of the costs of demolition that are not part of the voluntary**
128 **remediation activities, provided that the demolition is part of a redevelopment plan**
129 **approved by the local county government entity and the department of economic**
130 **development.**

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

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

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

145 **(6)** No more than seventy-five percent of earned remediation tax credits may be issued
146 when the remediation costs were paid, and the remaining percentage may be issued when the
147 department of natural resources issues a "Letter of Completion" letter or covenant not to sue
148 following completion of the voluntary remediation activities. It shall not include any costs

149 associated with ongoing operational environmental compliance of the facility or remediation
150 costs arising out of spills, leaks, or other releases arising out of the ongoing business operations
151 of the facility.

152 4. In the exercise of the sound discretion of the director of the department of economic
153 development or the director's designee, the tax credits and exemptions described in this section
154 may be terminated, suspended or revoked, if the eligible project fails to continue to meet the
155 conditions set forth in this section. In making such a determination, the director shall consider
156 the severity of the condition violation, actions taken to correct the violation, the frequency of any
157 condition violations and whether the actions exhibit a pattern of conduct by the eligible facility
158 owner and operator. The director shall also consider changes in general economic conditions and
159 the recommendation of the director of the department of natural resources, or his or her designee,
160 concerning the severity, scope, nature, frequency and extent of any violations of the
161 environmental compliance conditions. The taxpayer or person claiming the tax credits or
162 exemptions may appeal the decision regarding termination, suspension or revocation of any tax
163 credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section
164 135.250, RSMo. The director of the department of economic development shall notify the
165 directors of the departments of natural resources and revenue of the termination, suspension or
166 revocation of any tax credits as determined in this section or pursuant to the provisions of section
167 447.716.

168 5. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax
169 credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection
170 1 of this section and the tax credits otherwise allowed in section 135.110, RSMo, or the tax
171 credits, exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and
172 135.245, RSMo, respectively, for the same facility for the same tax period.

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

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

176 (2) One hundred percent of the total business' income tax if the eligible facility does not
177 replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax
178 period in which the tax credits are earned, and further provided the taxpayer does not operate any
179 other facilities besides the eligible project in Missouri; fifty percent of the total business' income
180 tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the
181 end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer
182 does not operate any other facilities besides the eligible project in Missouri; or twenty-five
183 percent of the total business income if the taxpayer operates, in addition to the eligible facility,
184 any other facilities in Missouri. In no case shall a taxpayer operating more than one eligible

project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business income in any tax period. That portion of the taxpayer's income attributed to the eligible project as referenced in subdivision (1) of this subsection, for which the credits allowed in sections 135.110 and 135.225, RSMo, and subsection 3 of this section, may apply, shall be determined in the same manner as prescribed in subdivision (6) of section 135.100, RSMo. That portion of the taxpayer's franchise tax attributed to the eligible project for which the remediation tax credit may offset, shall be determined in the same manner as prescribed in paragraph (a) of subdivision (6) of section 135.100, RSMo.

7. Taxpayers claiming the state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use. Otherwise, the taxpayer's right to claim such state tax benefits shall be forfeited. Unused business facility and enterprise zone tax credits shall not be carried forward but shall be initially claimed for the tax period during which the eligible project was first capable of being used, and during any applicable subsequent tax periods.

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

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

10. In the case where an operator and assignor of an eligible project has been certified to claim state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section, and sells or otherwise transfers title of the eligible project to another taxpayer or assignee who continues the same or substantially similar operations at the eligible project, the director shall allow the assignee to claim the credits for a period of time to be determined by the director; except that, the total number of tax periods the tax credits may be earned by the assignor and the

221 assignee shall not exceed ten. To perfect the transfer, the assignor shall provide written notice
222 to the director of the assignor's intent to transfer the tax credits to the assignee, the date the
223 transfer is effective, the assignee's name, address, and the assignee's tax period, and the amount
224 of tax credits to be transferred.

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

- 228 (1) The shareholders of the corporation described in section 143.471, RSMo;
229 (2) The partners of the partnership.

230

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