

SECOND REGULAR SESSION

HOUSE BILL NO. 1503

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ERVIN (Sponsor), PEARCE, RICHARD, DEMPSEY, BLACK,
BAKER, REINHART, WILDBERGER, MUNZLINGER AND PAGE (Co-sponsors).

Read 1st time February 17, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4552L.011

AN ACT

To amend chapter 100, RSMo, by adding thereto seventeen new sections relating to business use incentives.

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

Section A. Chapter 100, RSMo, is amended by adding thereto seventeen new sections,
2 to be known as sections 100.900, 100.910, 100.920, 100.930, 100.940, 100.950, 100.960,
3 100.970, 100.980, 100.990, 100.1000, 100.1010, 100.1020, 100.1030, 100.1040, 100.1050, and
4 100.1060, to read as follows:

2 **100.900. Sections 100.900 to 100.1050 shall be known as the "Missouri Business Use
Incentives for Small Business Development (BUILD) Act".**

100.910. As used in sections 100.900 to 100.1050 the following terms mean:

- 2 (1) "Assessment", an amount of up to five percent of the gross wages paid in one
3 year by an eligible industry to all eligible employees in new jobs;
4 (2) "Board", the Missouri development finance board as created by section
5 100.265;
6 (3) "Certificates", the revenue bonds or notes authorized to be issued by the board
7 under section 100.840;
8 (4) "Credit", the amount agreed to between the board and an eligible industry, but
9 not to exceed the assessment attributable to the eligible industry's project;
10 (5) "Department", the Missouri department of economic development;
11 (6) "Director", the director of the department of economic development;
12 (7) "Economic development project":
13 (a) The acquisition of any real property by the board, the eligible industry, or its

14 **affiliate; or**

15 **(b) The fee ownership of real property by the eligible industry or its affiliate; and**

16 **(c) For both paragraphs (a) and (b) of this subdivision, "economic development**
17 **project" shall also include the development of the real property including construction,**
18 **installation, or equipping of a project, including fixtures and equipment, and facilities**
19 **necessary or desirable for improvement of the real property, including surveys; site tests**
20 **and inspections; subsurface site work; excavation; removal of structures, roadways,**
21 **cemeteries and other surface obstructions; filling, grading and provision of drainage, storm**
22 **water retention, installation of utilities such as water, sewer, sewage treatment, gas,**
23 **electricity, communications, and similar facilities; off-site construction of utility extensions**
24 **to the boundaries of the real property; and the acquisition, installation, or equipping of**
25 **facilities on the real property, for use and occupancy by the eligible industry or its**
26 **affiliates;**

27 **(8) "Eligible employee", a person employed on a full-time basis in a new job at the**
28 **economic development project averaging at least thirty-five hours per week who was not**
29 **employed by the eligible industry or a related taxpayer in this state at any time during the**
30 **twelve-month period immediately prior to being employed at the economic development**
31 **project;**

32 **(9) "Eligible industry", a business located within the state of Missouri which is**
33 **engaged in interstate or intrastate commerce for the purpose of life sciences, advanced**
34 **manufacturing, processing, or assembling products, conducting research and development,**
35 **or agricultural processing, but excluding retail, health, or professional services. Eligible**
36 **industry does not include a business which closes or substantially reduces its operation at**
37 **one location in the state and relocates substantially the same operation to another location**
38 **in the state. This does not prohibit a business from expanding its operations at another**
39 **location in the state provided that existing operations of a similar nature located within the**
40 **state are not closed or substantially reduced. This also does not prohibit a business from**
41 **moving its operations from one location in the state to another location in the state for the**
42 **purpose of expanding such operation provided that the board determines that such**
43 **expansion cannot reasonably be accommodated within the municipality in which such**
44 **business is located, or in the case of a business located in an incorporated area of the**
45 **county, within the county in which such business is located, after conferring with the chief**
46 **elected official of such municipality or county and taking into consideration any evidence**
47 **offered by such municipality or county regarding the ability to accommodate such**
48 **expansion within such municipality or county. An eligible industry shall:**

49 **(a) Invest in an economic development project an amount that is equal to or in**

50 excess of the amount set forth below for the type of municipality the project is undertaken
 51 in, and create at least as many new jobs for eligible employees at the economic development
 52 project as are set forth below within three years of the commencement of the project:

53 Population of	Amount of	New Jobs
54 Municipality	Investment	Created
55 300,000 or more	\$4,000,000	20
56 100,000 to 299,999	\$3,000,000	15
57 50,001 to 99,999	\$1,000,000	10
58 50,000 or less	\$500,000	5; and

59 (b) Not currently be a party to a financing agreement with the board under the
 60 Missouri business use incentive for large scale development act;

61 (10) "Municipality", any city, village, incorporated town, or any county of this state
 62 established on or prior to January 1, 2001, as well as any unincorporated area;

63 (11) "New job", a job in a new or expanding eligible industry not including jobs
 64 of recalled workers, replacement jobs or jobs that formerly existed in the eligible industry
 65 in the state;

66 (12) "Program costs", all necessary and incidental costs of providing program
 67 services including payment of the principal of premium, if any, and interest on certificates,
 68 including capitalized interest, issued to finance a project, and funding and maintenance of
 69 a debt service reserve fund to secure such certificates. Program costs shall include:

70 (a) Obligations incurred for labor and obligations incurred to contractors,
 71 subcontractors, builders and materialmen in connection with the acquisition, construction,
 72 installation or equipping of an economic development project;

73 (b) The cost of acquiring land or rights in land and any cost incidental thereto,
 74 including recording fees;

75 (c) The cost of contract bonds and of insurance of all kinds that may be required
 76 or necessary during the course of acquisition, construction, installation or equipping of an
 77 economic development project which is not paid by the contractor or contractors or
 78 otherwise provided for;

79 (d) All costs of architectural and engineering services, including test borings,
 80 surveys, estimates, plans and specifications, preliminary investigations, and supervision of
 81 construction, as well as the costs for the performance of all the duties required by or
 82 consequent upon the acquisition, construction, installation, or equipping of an economic
 83 development project;

84 (e) All costs which are required to be paid under the terms of any contract or

85 **contracts for the acquisition, construction, installation or equipping of an economic**
86 **development project; and**

87 **(f) All other costs of a nature comparable to those described in this subdivision;**

88 **(13) "Program services", administrative expenses of the board including contracted**
89 **professional services and the cost of issuance of certificates;**

100.920. 1. The Missouri development finance board shall have in addition to the
2 **powers provided to it in sections 100.250 to 100.297 and with the approval of the**
3 **department all the powers necessary to carry out and effectuate the purposes and**
4 **provisions of sections 100.900 to 100.1050, including, but not limited to, the power to:**

5 **(1) Provide and finance economic development projects, under the provisions of**
6 **sections 100.900 to 100.1050, and cooperate with eligible industries in order to promote,**
7 **foster, and support economic development within the state;**

8 **(2) Conduct hearings and inquiries, in the manner and by the methods as it deems**
9 **desirable for the purpose of gathering information with respect to eligible industries and**
10 **economic development projects and for the purpose of making any determinations**
11 **necessary or desirable in the furtherance of sections 100.900 to 100.1050; and**

12 **(3) Negotiate the terms of including the amount of project costs and enter into**
13 **financing agreements with eligible industries, and in connection with the financing**
14 **agreements to acquire, convey, sell, mortgage, finance, or otherwise dispose of any**
15 **property, real or personal, loan bond proceeds, and permit the use of assessments, in**
16 **connection with an economic development project and to pay, or cause to be paid, in**
17 **accordance with the provisions of a financing agreement the program costs of an economic**
18 **development project from any funds available therefor.**

19 **2. Certificates issued by the board under the provisions of sections 100.900 to**
20 **100.1050 shall not constitute an indebtedness or liability of the state of Missouri within the**
21 **meaning of any state constitutional provision or statutory limitation, shall not constitute**
22 **a pledge of the faith and credit of the state of Missouri, shall not be guaranteed by the**
23 **credit of the state, and unless approved by a concurrent resolution of the general assembly,**
24 **no certificate in default shall be paid by the state of Missouri.**

100.930. 1. The department, in conjunction with the board, shall establish the
2 **procedures and standards for the determination and approval of eligible industries and**
3 **their economic development projects by the promulgation of rules in accordance with**
4 **sections 100.900 to 100.1050, chapter 536, RSMo, and section 620.1066, RSMo. These rules**
5 **shall mandate the evaluation of the credit worthiness of eligible industries, the number of**
6 **new jobs to be provided by an economic development project to residents of the state, and**
7 **the likelihood of the economic success of the economic development project. No economic**

8 development project which will result in the replacement of facilities existing in the state
9 shall be approved by the board.

10 2. With respect to each eligible industry making an application to the board for
11 incentives, and with respect to the economic development project described in the
12 application, the board shall request relevant information, documentation and other
13 materials and make inquiries of the applicant as necessary or appropriate. After a diligent
14 review of relevant materials and completion of its inquiries, the board may by resolution
15 designate an economic development project.

2 100.940. The board may enter into with any eligible industry a financing agreement
3 with respect to its economic development project with the approval of the department and
4 in consultation with the office of administration. Subject to the inclusion of the mandatory
5 provisions set forth in sections 100.900 to 100.1050, the terms and provisions of each
6 financing agreement shall be determined by negotiations between the board and the
7 eligible industry.

2 100.950. The financing agreement shall provide in substance that:

3 (1) It may be assigned by the eligible industry only upon the prior written consent
4 of the board following the adoption of a resolution by the board to such effect; and

5 (2) Upon default by the eligible industry in any obligations under the financing
6 agreement or other documents evidencing, securing or related to the eligible industry's
7 obligations, the board shall have the right to:

8 (a) Declare the financing agreement or other such documents in default;

9 (b) Accelerate and declare the total of all such payments due by the eligible
10 industry and sell the economic development project at public, private, or judicial sale;

11 (c) Pursue any remedy provided under the financing agreement or other such
12 documents;

13 (d) Be entitled to the appointment of a receiver by the circuit court in which any
14 part of the economic development project is located; and

15 (e) Pursue any other applicable legal remedy.

2 100.960. After receipt of an application, the board may, with the approval of the
3 department enter into an agreement with an eligible industry for a credit under sections
4 100.900 to 100.1050 if the board determines that all of the following conditions exist:

5 (1) The applicant's project will create new jobs that were not jobs previously
6 performed by employees of the applicant in Missouri;

7 (2) The applicant's project is economically sound and will benefit the people of
8 Missouri by increasing opportunities for employment and strengthening the economy of
9 Missouri;

9 **(3) Significant local incentives with respect to the project or eligible industry have**
10 **been committed, which incentives may consist of:**

11 **(a) Cash or in-kind incentives derived from any nonstate source including**
12 **incentives provided by the affected political subdivisions, private industry, or local**
13 **chambers of commerce or similar such organizations; or**

14 **(b) Relief from local taxes, in either case as acceptable to the board;**

15 **(4) Receiving the credit is a major factor in the applicant's decision to go forward**
16 **with the project and not receiving the credit will result in the applicant not creating new**
17 **jobs in Missouri;**

18 **(5) Awarding the credit will result in an overall positive fiscal impact to the state;**

19 **(6) There is at least one other state that the applicant verifies is being considered**
20 **for the project; and**

21 **(7) A significant disparity is identified, using best available data in the projected**
22 **costs for the applicant's project compared to the costs in the competing state, including the**
23 **impact of the competing state's incentive programs. The competing state's incentive**
24 **program shall include state, local, private and federal funds.**

100.970. In determining the credit that should be awarded, the board shall take into
2 **consideration the following factors:**

3 **(1) The economy of the county where the projected investment is to occur;**

4 **(2) The potential impact on the economy of Missouri;**

5 **(3) The payroll attributable to the project;**

6 **(4) The capital investment attributable to the project;**

7 **(5) The amount the average wage paid by the applicant exceeds the average wage**
8 **paid within the county in which the project will be located;**

9 **(6) The costs to Missouri and the affected political subdivisions with respect to the**
10 **project;**

11 **(7) The financial assistance that is otherwise provided by Missouri and the affected**
12 **political subdivisions; and**

13 **(8) The magnitude of the cost differential between Missouri and the competing**
14 **state.**

100.980. The board shall determine the amount and duration of a project and its
2 **associated assessments, credits and refunds. The credit amount may not exceed the**
3 **estimated assessment. Assessments made for any project may not exceed a period of fifteen**
4 **years.**

100.990. An agreement between the board and an eligible industry shall include all
2 **of the following:**

- 3 **(1) A detailed description of the project that is the subject of the agreement;**
4 **(2) A specific method for determining the number of new employees employed**
5 **during a taxable year who are performing jobs not previously performed by an employee**
6 **of the eligible industry;**
7 **(3) A requirement that the taxpayer shall annually report to the board the number**
8 **of new employees who are performing jobs not previously performed by an employee, the**
9 **total amount of salaries and wages paid to eligible employees in new jobs, and any other**
10 **information the board needs to perform its duties under sections 100.900 to 100.1050;**
11 **(4) A requirement that the taxpayer shall provide written notification to the**
12 **director and the board not more than thirty days after the taxpayer makes or receives a**
13 **proposal that would transfer the taxpayer's state tax liability obligations to a successor**
14 **taxpayer;**
15 **(5) Any other performance conditions that the board and the director determine**
16 **are appropriate; and**
17 **(6) A requirement that the taxpayer shall maintain operations at the project**
18 **location for at least a period of time equal to the number of years for which credits are**
19 **authorized in the financing agreement with the board.**

2 **100.1000. If the board determines that an eligible industry which has received a**
3 **credit under sections 100.900 to 100.1050 is not complying with the requirements of the**
4 **credit agreement or all of the provisions of sections 100.900 to 100.1050, the board shall**
5 **after giving the industry an opportunity to explain the noncompliance notify the**
6 **department of revenue of the noncompliance and request a penalty. The board shall state**
7 **the amount of the penalty, which may not exceed the sum of any previously allowed**
8 **assessments under sections 100.900 to 100.1050.**

2 **100.1010. On an annual basis, the director shall provide for an evaluation of the**
3 **program. The evaluation shall include an assessment of the effectiveness of the program**
4 **in creating new jobs in Missouri and of the revenue impact of the program. The director**
5 **shall submit a report on the evaluation to the governor, the president pro tem of the senate,**
6 **and the speaker of the house of representatives.**

2 **100.1020. An agreement between the board and an eligible industry shall provide**
3 **that all or part of program costs are to be met by receipt of assessments. Assessments shall**
4 **be based upon wages paid to eligible employees. If business or employment conditions**
5 **cause the amount of the assessment to be less than the amount projected in the agreement**
6 **for any time period, then the employer shall pay to the board the amount of such**
7 **difference, then a portion of withholding tax paid by the employer under sections 143.191**
8 **to 143.265, RSMo, may be credited to the board by the amount of such difference. The**

8 employer shall remit the amount of the assessment to the board. When all program costs,
9 including the principal of, premium, if any, and interest on the certificates have been paid
10 the employer credits shall cease.

100.1030. 1. The board shall establish a special fund for and in the name of each
2 project. All moneys received by the board in respect of the project and required by the
3 agreement to be used to pay program costs for the project shall be deposited in the special
4 fund. Amounts held in the special fund may be used and disbursed by the board only to
5 pay program costs for the project.

6 2. Any disbursement in respect of a project under the provisions of sections 100.900
7 to 100.1050 and the special fund into which it is paid may be irrevocably pledged by the
8 board for the payment of the principal of, premium, if any, and interest on the certificate
9 issued by the board to finance or refinance in whole or in part the project.

10 3. The employer shall certify to the department of revenue that the assessment is
11 in accordance with an agreement and shall provide other information the department may
12 require.

13 4. If an agreement provides that all or part of program costs are to be met by
14 receipt of assessments, the provisions of this section shall also apply to any successor to the
15 original employer until such time as the principal and interest on the certificates have been
16 paid.

100.1040. 1. To provide funds for the present payment of the costs of economic
2 development projects, the board may borrow money and issue and sell certificates payable
3 from a sufficient portion of the future receipts of payments authorized by the agreement.
4 The receipts shall be pledged to the payment of principal of and interest on the certificates.
5 Certificates may be sold at public sale or at private sale at par, premium, or discount of not
6 less than ninety-five percent of the par value thereof at the discretion of the board and may
7 bear interest at such rate or rates as the board shall determine, notwithstanding the
8 provisions of section 108.170, RSMo, to the contrary. Certificates may be issued with
9 respect to a single project or multiple projects and may contain terms or conditions as the
10 board may provide by resolution authorizing the issuance of the certificates.

11 2. If eighty percent or more of an eligible industry's program costs are owed to any
12 number or combination of Missouri corporations, professional corporations, limited
13 partnerships, limited liability partnerships, limited liability limited partnerships, limited
14 liability corporations, general partnerships, proprietorships, or other Missouri business
15 entities the board may issue in addition to the certificates authorized under subsection 1
16 of this section certificates of the type authorized under that subsection in an amount equal
17 to twenty-five percent of the program costs owed to such Missouri entities.

18 **3. Certificates issued to refund other certificates may be sold at public sale or at**
19 **private sale as provided in this section with the proceeds from the sale to be used for the**
20 **payment of the certificates being refunded. The refunding certificates may be exchanged**
21 **in payment and discharge of the certificates being refunded, in installments at different**
22 **times, or an entire issue or series at one time. Refunding certificates may be sold or**
23 **exchanged at any time on, before, or after the maturity of the outstanding certificates to**
24 **be refunded. Certificates may be issued for the purpose of refunding a like, greater, or**
25 **lesser principal amount of certificates and may bear a higher, lower, or equivalent rate of**
26 **interest than the certificates being renewed or refunded.**

27 **4. The board shall determine if revenues provided in the agreement are sufficient**
28 **to secure the faithful performance of obligations in the agreement.**

29 **5. Certificates issued under this section shall not be deemed to be an indebtedness**
30 **of the state or the board or of any political subdivision of the state. The certificates may**
31 **become an indebtedness of the board upon the determination of both the director and the**
32 **board.**

100.1050. 1. The approved company shall remit to the board a job development
2 **assessment fee not to exceed five percent of the gross wages of each eligible employee whose**
3 **job was created as a result of the economic development project for the purpose of retiring**
4 **bonds which fund the economic development project.**

5 **2. Any approved company remitting an assessment as provided in subsection 1 of**
6 **this section shall make its payroll books and records available to the board at such**
7 **reasonable times as the board shall request and shall file with the board documentation**
8 **respecting the assessment as the board may require.**

9 **3. Any assessment remitted under subsection 1 of this section shall cease on the date**
10 **the bonds are retired.**

11 **4. Any approved company which has paid an assessment for debt reduction shall**
12 **be allowed a tax credit equal to the amount of the assessment. The tax credit may be**
13 **claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, except**
14 **withholding taxes imposed under the provisions of sections 143.191 to 143.265, RSMo,**
15 **which were incurred during the tax period in which the assessment was made.**

16 **5. In no event shall the aggregate amount of tax credits authorized by subsection**
17 **4 of this section exceed eleven million dollars annually.**

18 **6. The director of revenue shall issue a refund to the approved company to the**
19 **extent that the amount of credits allowed in subsection 4 of this section exceeds the amount**
20 **of the approved company's income tax.**

100.1060. Under section 23.253, RSMo, of the Missouri Sunset Act:

2 **(1) The provisions of the new program authorized under sections 100.900 to**
3 **100.1050 shall automatically sunset six years after the effective date of sections 100.900 to**
4 **100.1050 unless reauthorized by an act of the general assembly; and**

5 **(2) If such program is reauthorized, the program authorized under sections 100.900**
6 **to 100.1050 shall automatically sunset twelve years after the effective date of the**
7 **reauthorization of sections 100.900 to 100.1050; and**

8 **(3) This section shall terminate on September first of the calendar year immediately**
9 **following the calendar year in which the program authorized under sections 100.900 to**
10 **100.1050 is sunset.**