

FIRST REGULAR SESSION

# HOUSE BILL NO. 328

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RICHARDS (Sponsor), PEARCE,  
BOWMAN AND KRATKY (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

1216L.01I

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### AN ACT

To repeal sections 135.950 and 135.967, RSMo, and to enact in lieu thereof two new sections relating to enhanced enterprise zones.

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

Section A. Sections 135.950 and 135.967, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 135.950 and 135.967, to read as follows:

135.950. The following terms, whenever used in sections 135.950 to 135.970 mean:

- 2 (1) "Blighted area", an area which, by reason of the predominance of defective or  
3 inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements,  
4 improper subdivision or obsolete platting, or the existence of conditions which endanger life or  
5 property by fire and other causes, or any combination of such factors, retards the provision of  
6 housing accommodations or constitutes an economic or social liability or a menace to the public  
7 health, safety, morals, or welfare in its present condition and use;
- 8 (2) "Board", an enhanced enterprise zone board established pursuant to section 135.957;
- 9 (3) "Commencement of commercial operations" shall be deemed to occur during the first  
10 taxable year for which the new business facility is first put into use by the taxpayer in the  
11 enhanced business enterprise in which the taxpayer intends to use the new business facility;
- 12 (4) "Department", the department of economic development;
- 13 (5) "Director", the director of the department of economic development;
- 14 (6) "Employee", [a person employed by the enhanced business enterprise on:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 15 (a) A regular, full-time basis;
- 16 (b) A part-time basis, provided such person is customarily performing such duties an  
17 average of at least twenty hours per week; or
- 18 (c) A seasonal basis, provided such person performs such duties for at least eighty  
19 percent of the season customary for the position in which such person is employed] **a person**  
20 **that is scheduled to work an average of at least twenty hours per week for the first six**  
21 **months after the position is created and thirty-five hours a week thereafter, and such**  
22 **person at all times has health insurance offered to him or her, which is partially paid for**  
23 **by the employer;**
- 24 (7) "Enhanced business enterprise", an industry or one of a cluster of industries that is  
25 either:
- 26 (a) Identified by the department as critical to the state's economic security and growth;  
27 or
- 28 (b) Will have an impact on industry cluster development, as identified by the governing  
29 authority in its application for designation of an enhanced enterprise zone and approved by the  
30 department; but excluding gambling establishments (NAICS industry group 7132), retail trade  
31 (NAICS sectors 44 and 45) and food and drinking places (NAICS subsector 722). Service  
32 industries may be eligible only if a majority of its annual revenues will be derived from services  
33 provided out of the state;
- 34 (8) "Existing business facility", any facility in this state which was employed by the  
35 taxpayer claiming the credit in the operation of an enhanced business enterprise immediately  
36 prior to an expansion, acquisition, addition, or replacement;
- 37 (9) "Facility", any building used as an enhanced business enterprise located within an  
38 enhanced enterprise zone, including the land on which the facility is located and all machinery,  
39 equipment, and other real and depreciable tangible personal property acquired for use at and  
40 located at or within such facility and used in connection with the operation of such facility;
- 41 (10) **"Facility-based employment", the greater of the number of full-time employees**  
42 **located at the facility on the date of the notice of intent, or for the twelve-month period**  
43 **prior to the date of the notice of intent, the average number of employees located at the**  
44 **facility, or in the event the project facility has not been in operation for a full twelve-month**  
45 **period, the average number of employees for the number of months the facility has been**  
46 **in operation prior to the date of the notice of intent;**
- 47 (11) **"Facility base payroll", the total amount of taxable wages paid by the**  
48 **enhanced business enterprise to employees of the enhanced business enterprise located at**  
49 **the facility in the twelve months prior to the notice of intent, not including the payroll of**  
50 **owners of the enhanced business enterprise unless the enhanced business enterprise is**  
51 **participating in an employee stock ownership plan. For the purposes of calculating the**

52 **benefits under this program, the amount of base payroll shall increase each year based on**  
53 **the consumer price index or other comparable measure, as determined by the department;**

54 (12) "Governing authority", the body holding primary legislative authority over a county  
55 or incorporated municipality;

56 [(11)] (13) "NAICS", the 1997 edition of the North American Industry Classification  
57 System as prepared by the Executive Office of the President, Office of Management and Budget.  
58 Any NAICS sector, subsector, industry group or industry identified in this section shall include  
59 its corresponding classification in subsequent federal industry classification systems;

60 [(12)] (14) "New business facility", a facility that satisfies the following requirements:

61 (a) Such facility is employed by the taxpayer in the operation of an enhanced business  
62 enterprise. Such facility shall not be considered a new business facility in the hands of the  
63 taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person  
64 or persons. If the taxpayer employs only a portion of such facility in the operation of an  
65 enhanced business enterprise, and leases another portion of such facility to another person or  
66 persons or does not otherwise use such other portions in the operation of an enhanced business  
67 enterprise, the portion employed by the taxpayer in the operation of an enhanced business  
68 enterprise shall be considered a new business facility, if the requirements of paragraphs (b), (c),  
69 and (d) of this subdivision are satisfied;

70 (b) Such facility is acquired by, or leased to, the taxpayer after December 31, 2004. A  
71 facility shall be deemed to have been acquired by, or leased to, the taxpayer after December 31,  
72 2004, if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding  
73 contract to transfer title to the taxpayer, or the commencement of the term of the lease to the  
74 taxpayer occurs after December 31, 2004;

75 (c) If such facility was acquired by the taxpayer from another taxpayer and such facility  
76 was employed immediately prior to the acquisition by another taxpayer in the operation of an  
77 enhanced business enterprise, the operation of the same or a substantially similar enhanced  
78 business enterprise is not continued by the taxpayer at such facility; and

79 (d) Such facility is not a replacement business facility, as defined in subdivision [(16)]  
80 (22) of this section;

81 [(13)] (15) "New business facility employee", an employee of the taxpayer in the  
82 operation of a new business facility during the taxable year for which the credit allowed by  
83 section 135.967 is claimed, except that truck drivers and rail and barge vehicle operators and  
84 other operators of rolling stock for hire shall not constitute new business facility employees;

85 [(14)] (16) "New business facility investment", the value of real and depreciable tangible  
86 personal property, acquired by the taxpayer as part of the new business facility, which is used by  
87 the taxpayer in the operation of the new business facility, during the taxable year for which the

88 credit allowed by 135.967 is claimed, except that trucks, truck-trailers, truck semitrailers, rail  
89 vehicles, barge vehicles, aircraft and other rolling stock for hire, track, switches, barges, bridges,  
90 tunnels, and rail yards and spurs shall not constitute new business facility investments. The total  
91 value of such property during such taxable year shall be:

92 (a) Its original cost if owned by the taxpayer; or

93 (b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental  
94 rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the  
95 taxpayer from subrentals. The new business facility investment shall be determined by dividing  
96 by twelve the sum of the total value of such property on the last business day of each calendar  
97 month of the taxable year. If the new business facility is in operation for less than an entire  
98 taxable year, the new business facility investment shall be determined by dividing the sum of the  
99 total value of such property on the last business day of each full calendar month during the  
100 portion of such taxable year during which the new business facility was in operation by the  
101 number of full calendar months during such period;

102 **(17) "New job", the number of employees located at the facility that exceeds the**  
103 **facility base employment less any decrease in the number of the employees at related**  
104 **facilities below the related facility base employment. No job that was created prior to the**  
105 **date of the notice of intent shall be deemed a new job;**

106 **(18) "Notice of intent", a form developed by the department which is completed by**  
107 **the enhanced business enterprise and submitted to the department which states the**  
108 **enhanced business enterprise's intent to hire new jobs and request benefits under such**  
109 **program;**

110 **(19) "Related facility", a facility operated by the enhanced business enterprise or**  
111 **a related company located in this state that is directly related to the operation of the project**  
112 **facility;**

113 **(20) "Related facility base employment", the greater of:**

114 **(a) The number of employees located at all related facilities on the date of the notice**  
115 **of intent; or**

116 **(b) For the twelve-month period prior to the date of the notice of intent, the average**  
117 **number of employees located at all related facilities of the enhanced business enterprise or**  
118 **a related company located in this state;**

119 **[(15)] (21) "Related taxpayer":**

120 **(a) A corporation, partnership, trust, or association controlled by the taxpayer;**

121 **(b) An individual, corporation, partnership, trust, or association in control of the**  
122 **taxpayer; or**

123 **(c) A corporation, partnership, trust or association controlled by an individual,**  
124 **corporation, partnership, trust or association in control of the taxpayer. "Control of a**

125 corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty  
126 percent of the total combined voting power of all classes of stock entitled to vote, "control of a  
127 partnership or association" shall mean ownership of at least fifty percent of the capital or profits  
128 interest in such partnership or association, and "control of a trust" shall mean ownership, directly  
129 or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such  
130 trust; ownership shall be determined as provided in Section 318 of the Internal Revenue Code  
131 of 1986, as amended;

132 [(16)] **(22)** "Replacement business facility", a facility otherwise described in subdivision  
133 [(12)] **(14)** of this section, hereafter referred to in this subdivision as "new facility", which  
134 replaces another facility, hereafter referred to in this subdivision as "old facility", located within  
135 the state, which the taxpayer or a related taxpayer previously operated but discontinued operating  
136 on or before the close of the first taxable year for which the credit allowed by this section is  
137 claimed. A new facility shall be deemed to replace an old facility if the following conditions are  
138 met:

139 (a) The old facility was operated by the taxpayer or a related taxpayer during the  
140 taxpayer's or related taxpayer's taxable period immediately preceding the taxable year in which  
141 commencement of commercial operations occurs at the new facility; and

142 (b) The old facility was employed by the taxpayer or a related taxpayer in the operation  
143 of an enhanced business enterprise and the taxpayer continues the operation of the same or  
144 substantially similar enhanced business enterprise at the new facility.

145  
146 Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered  
147 a replacement business facility if the taxpayer's new business facility investment, as computed  
148 in subdivision [(14)] **(16)** of this section, in the new facility during the tax period for which the  
149 credits allowed in section 135.967 are claimed exceed one million dollars and if the total number  
150 of employees at the new facility exceeds the total number of employees at the old facility by at  
151 least two;

152 [(17)] **(23)** "Same or substantially similar enhanced business enterprise", an enhanced  
153 business enterprise in which the nature of the products produced or sold, or activities conducted,  
154 are similar in character and use or are produced, sold, performed, or conducted in the same or  
155 similar manner as in another enhanced business enterprise.

135.967. 1. A taxpayer who establishes a new business facility may, upon approval by  
2 the department, be allowed a credit, each tax year for up to ten tax years, in an amount  
3 determined as set forth in this section, against the tax imposed by chapter 143, RSMo, excluding  
4 withholding tax imposed by sections 143.191 to 143.265, RSMo. No taxpayer shall receive  
5 multiple ten-year periods for subsequent expansions at the same facility.

6           2. Notwithstanding any provision of law to the contrary, any taxpayer who establishes  
7 a new business facility in an enhanced enterprise zone and is awarded state tax credits under this  
8 section may not also receive tax credits under sections 135.100 to 135.150, sections 135.200 to  
9 135.268, or section 135.535.

10           3. No credit shall be issued pursuant to this section unless:

11           (1) The number of new business facility employees engaged or maintained in  
12 employment at the new business facility for the taxable year for which the credit is claimed  
13 equals or exceeds two; and

14           (2) The new business facility investment for the taxable year for which the credit is  
15 claimed equals or exceeds one hundred thousand dollars.

16           4. The annual amount of credits allowed for an approved enhanced business enterprise  
17 shall be the lesser of:

18           (1) The annual amount authorized by the department for the enhanced business  
19 enterprise, which shall be limited to the projected state economic benefit, as determined by the  
20 department; or

21           (2) The sum calculated based upon the following:

22           (a) A credit of four hundred dollars for each new business facility employee employed  
23 within an enhanced enterprise zone;

24           (b) An additional credit of four hundred dollars for each new business facility employee  
25 who is a resident of an enhanced enterprise zone;

26           (c) An additional credit of four hundred dollars for each new business facility employee  
27 who is paid by the enhanced business enterprise a wage that exceeds the average wage paid  
28 within the county in which the facility is located, as determined by the department; and

29           (d) A credit equal to two percent of new business facility investment within an enhanced  
30 enterprise zone.

31           5. Prior to January 1, 2007, in no event shall the department authorize more than four  
32 million dollars annually to be issued for all enhanced business enterprises. After December 31,  
33 2006, in no event shall the department authorize more than [seven] **twenty-five** million dollars  
34 annually to be issued for all enhanced business enterprises.

35           6. If a facility, which does not constitute a new business facility, is expanded by the  
36 taxpayer, the expansion shall be considered eligible for the credit allowed by this section if:

37           (1) The taxpayer's new business facility investment in the expansion during the tax  
38 period in which the credits allowed in this section are claimed exceeds one hundred thousand  
39 dollars and if the number of new business facility employees engaged or maintained in  
40 employment at the expansion facility for the taxable year for which credit is claimed equals or  
41 exceeds two, and the total number of employees at the facility after the expansion is at least two  
42 greater than the total number of employees before the expansion; and

43           (2) The taxpayer's investment in the expansion and in the original facility prior to  
44 expansion shall be determined in the manner provided in subdivision [(12)] **(14)** of section  
45 135.950.

46           7. The number of new business facility employees during any taxable year shall be  
47 determined by dividing by twelve the sum of the number of individuals employed on the last  
48 business day of each month of such taxable year. If the new business facility is in operation for  
49 less than the entire taxable year, the number of new business facility employees shall be  
50 determined by dividing the sum of the number of individuals employed on the last business day  
51 of each full calendar month during the portion of such taxable year during which the new  
52 business facility was in operation by the number of full calendar months during such period. For  
53 the purpose of computing the credit allowed by this section in the case of a facility which  
54 qualifies as a new business facility under subsection 6 of this section, and in the case of a new  
55 business facility which satisfies the requirements of paragraph (c) of subdivision [(12)] **(14)** of  
56 section 135.950, or subdivision [(16)] **(22)** of section 135.950, the number of new business  
57 facility employees at such facility shall be reduced by the average number of individuals  
58 employed, computed as provided in this subsection, at the facility during the taxable year  
59 immediately preceding the taxable year in which such expansion, acquisition, or replacement  
60 occurred and shall further be reduced by the number of individuals employed by the taxpayer or  
61 related taxpayer that was subsequently transferred to the new business facility from another  
62 Missouri facility and for which credits authorized in this section are not being earned, whether  
63 such credits are earned because of an expansion, acquisition, relocation, or the establishment of  
64 a new facility.

65           8. In the case where a new business facility employee who is a resident of an enhanced  
66 enterprise zone for less than a twelve-month period is employed for less than a twelve-month  
67 period, the credits allowed by paragraph (b) of subdivision (2) of subsection 4 of this section  
68 shall be determined by multiplying four hundred dollars by a fraction, the numerator of which  
69 is the number of calendar days during the taxpayer's tax year for which such credits are claimed,  
70 in which the employee was a resident of an enhanced enterprise zone, and the denominator of  
71 which is three hundred sixty-five.

72           9. For the purpose of computing the credit allowed by this section in the case of a facility  
73 which qualifies as a new business facility pursuant to subsection 6 of this section, and in the case  
74 of a new business facility which satisfies the requirements of paragraph (c) of subdivision [(12)]  
75 **(14)** of section 135.950 or subdivision [(16)] **(22)** of section 135.950, the amount of the  
76 taxpayer's new business facility investment in such facility shall be reduced by the average  
77 amount, computed as provided in subdivision [(12)] **(14)** of section 135.950 for new business  
78 facility investment, of the investment of the taxpayer, or related taxpayer immediately preceding

79 such expansion or replacement or at the time of acquisition. Furthermore, the amount of the  
80 taxpayer's new business facility investment shall also be reduced by the amount of investment  
81 employed by the taxpayer or related taxpayer which was subsequently transferred to the new  
82 business facility from another Missouri facility and for which credits authorized in this section  
83 are not being earned, whether such credits are earned because of an expansion, acquisition,  
84 relocation, or the establishment of a new facility.

85 10. For a taxpayer with flow-through tax treatment to its members, partners, or  
86 shareholders, the credit shall be allowed to members, partners, or shareholders in proportion to  
87 their share of ownership on the last day of the taxpayer's tax period.

88 11. Credits may not be carried forward but shall be claimed for the taxable year during  
89 which commencement of commercial operations occurs at such new business facility, and for  
90 each of the nine succeeding taxable years for which the credit is issued.

91 12. Certificates of tax credit authorized by this section may be transferred, sold, or  
92 assigned by filing a notarized endorsement thereof with the department that names the transferee,  
93 the amount of tax credit transferred, and the value received for the credit, as well as any other  
94 information reasonably requested by the department. The sale price cannot be less than  
95 seventy-five percent of the par value of such credits.

96 13. The director of revenue shall issue a refund to the taxpayer to the extent that the  
97 amount of credits allowed in this section exceeds the amount of the taxpayer's income tax.

98 **14. Prior to the issuance of tax credits, the department shall verify through the**  
99 **department of revenue that the tax credit applicant does not owe any delinquent income,**  
100 **sales, or use tax or interest or penalties on such taxes, and through the department of**  
101 **insurance that the applicant does not owe any delinquent insurance taxes. Such**  
102 **delinquency shall not affect the authorization of the application for such tax credits, except**  
103 **that the amount of credits issued shall be reduced by the applicant's tax delinquency. If**  
104 **the department of revenue or the department of insurance concludes that a taxpayer is**  
105 **delinquent after June fifteenth but before July first of any year and the application of tax**  
106 **credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then**  
107 **the taxpayer shall be granted thirty days to satisfy the deficiency in which interest,**  
108 **penalties, and additions to tax shall be tolled. After applying all available credits toward**  
109 **a tax delinquency, the administering agency shall notify the appropriate department, and**  
110 **that department shall update the amount of outstanding delinquent tax owed by the**  
111 **applicant. If any credits remain after satisfying all insurance, income, sales, and use tax**  
112 **delinquencies, the remaining credits shall be issued to the applicant, subject to the**  
113 **restrictions of other provisions of law.**

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