

HB 1498 -- TAX INCENTIVES

SPONSOR: Zerr

This bill revises the total amount that may be annually authorized on several tax credit programs and extends the expiration date on specified tax credits.

TECHNOLOGY BUSINESS FACILITIES AND DATA STORAGE CENTERS (Sections 67.2050 and 144.810, RSMo)

Beginning August 28, 2014, the bill authorizes a state and local sales and use tax exemption on items related to new data storage centers, limited to the net fiscal benefit of the state calculated over a 10-year period on:

- (a) All electrical energy, gas, water, and other utilities including telecommunications and Internet services used in a new data storage center;
- (b) All machinery, equipment, and computers used in any new center; and
- (c) All retail sales of tangible personal property and materials for the purposes of constructing a new data storage center.

Any new data storage center facility project seeking a tax exemption must submit a notice of intent and a project plan to the Department of Economic Development that identifies each known constructing and operating taxpayer for the project and any additional information that the department may require. The department must determine whether the project is eligible for exemption by verifying that a new facility will invest at least \$5 million within 12 consecutive months and results in the creation of at least five new jobs during a period of up to 36 consecutive months from the date of condition approval. The department must make a conditional determination within 30 days of submission by the operating taxpayer. Failure of the department to respond within the 30 days must result in a project plan being deemed conditionally approved.

Upon approval by the department, project taxpayers for expanding data center projects may, beginning August 28, 2014, and for a period of up to 10 years, be exempted from state and local sales and use taxes exemption on:

- (a) All electrical energy, gas, water, and other utilities including telecommunication and Internet services that, on an annual basis, exceed the amount used in the existing or the

replaced facility prior to the expansion;

(b) All machinery, equipment, and computers used in any expanding center; and

(c) All retail sales of tangible personal property and materials for the purpose of constructing, repairing, or remodeling an expanding data storage center.

Any expanding data storage center wishing to utilize these exemptions must submit a notice of intent and a project plan to the department that identifies each known constructing and operating taxpayer and any additional information that the department may reasonably require to determine eligibility for the exemption. The department must determine whether the project is eligible for exemption by verifying that an expanding facility will invest at least \$2 million within 12 consecutive months and results in the creation of at least two new jobs during a period of up to 24 consecutive months from the date of conditional approval. The department must make a conditional determination within 30 days of submission by the operating taxpayer. Failure of the department to respond within 30 days will result in a project plan being deemed conditionally approved. The departments of Economic Development and Revenue must conduct random audits to ensure that the intent of these provisions is followed. No recipient of an exemption can be eligible for benefits under any business recruitment tax credit under Section 135.800.

The provisions of the bill regarding the tax exemption regarding expanding data centers terminate on September 1, 2020 (Section 67.2050).

DISTRESSED AREAS LAND ASSEMBLAGE TAX CREDIT ACT (Section 99.1205)

This bill changes the laws regarding the Distressed Areas Land Assemblage Tax Credit. The bill revises the definition of "acquisition costs" to include engineering, site and redevelopment area planning of eligible parcels. Acquisition costs include maintenance costs for 12 years instead of five years.

The bill revises the definition of "eligible parcel" to exclude parcels acquired by the applicant from a municipal authority prior to August 28, 2007.

The bill revises the definition of an "eligible project area" to include a redevelopment area as defined under the Real Property Tax Increment Allocation Redevelopment Act and the area within one quarter mile of the former Missouri State Prison in Jefferson City. An applicant is required to own at least 50 acres of eligible

parcels within an eligible project area, excluding any parcels acquired from a municipal authority.

The bill revises the definition of "interest costs" to include loans for acquisition costs including interest, loan fees and closing costs associated with the refinancing of the loans.

The bill allows an applicant to receive a tax credit for acquisition and interest costs of an eligible parcel for 12 years instead of five years. An applicant is allowed to file for the tax credit quarterly instead of annually. The aggregate program cap authorized is \$48 million. The bill establishes a process for allocating the annual \$20 million in tax credits depending upon the number of eligible applicants.

The bill requires an applicant that seeks to continue to receive tax credits to make quarterly reports to the Department affirming that they are still eligible and the progress towards meeting deadlines for commencement of work and completion of the project.

TAX CREDITS AND TAX DEDUCTIONS

The bill:

(1) Prohibits the aggregate amount of all tax credits allowed the Wood Energy Tax from exceeding \$3.5 million in any fiscal year. The bill extends to June 30, 2020, when no new tax credits can be authorized (Section 135.305);

(2) Specifies that for all taxable years beginning on or after July 1, 2015, the total amount of tax credit authorizations that can be authorized in each fiscal year for the Low Income House Tax Credit for projects that are financed through tax-exempt bonds cannot exceed \$4 million. Currently, the maximum amount is \$6 million. The bill specifies that the total amount of tax credits allowed over a federal credit period must be attributed to the fiscal year in which the credits are authorized by the Missouri Housing Development Commission for a qualified Missouri project. For all fiscal years beginning on or after July 1, 2015, there must be a \$130 million, after July 1, 2016 there must be a \$125 million, after July 1, 2017 there must be a \$120 million, after July 1, 2018 there must be a \$115 million, after July 1, 2019 there must be a \$110 million cap on tax credit authorizations for projects that are not financed through tax-exempt bonds. Currently, there is not a maximum amount. The bill prohibits a taxpayer who receives state tax credits under these provisions from being eligible to receive a Historic Preservation Tax Credit for the same project (Sections 135.350 and 135.352);

(3) Specifies that the grape growers and wine producers tax credits can be used for used equipment as well as new. Beginning on or after July 1, 2015, the total amount of tax credits annually allowed for the Grape and Wine Producers Tax Credit cannot exceed \$200,000. Currently, there is no maximum amount (Section 135.700); and

(4) Specifies that for each fiscal year beginning on or after July 1, 2015, the total amount of applications that the Department of Economic Development cannot approve for the Historic Structures Rehabilitation Tax Credit for projects over \$275,000 cannot exceed \$90 million. The maximum amount that can be authorized in each fiscal year for projects under \$275,000 is \$10 million. For all applications for credits approved on or after July 1, 2015, no more than \$125,000 may be issued for the eligible costs and expenses incurred in the rehabilitation of certain eligible owner-occupied residential property. A taxpayer who receives a low income housing tax credit for a project not financed through tax-exempt bonds issuance cannot be eligible for a historic preservation tax credit for the same project. An application for the final approval and issuance of a tax credit must include a cost and expense certification by an independent licensed certified public accountant with any accrued developer fees stated separately. The department will have 45 days from receipt of the application for final approval to determine whether the completed project meets the required standards and to issue a tax credit certificate equal to 75% of the eligible costs and expenses verified to that date or the amount of tax credits approved for the project. Within 120 days following the receipt, the department must determine the final amount of eligible rehabilitation costs and expenses. If a taxpayer receives a tax credit that includes an amount attributable to accrued developer fees, he or she must submit within six years of completion of the rehabilitation an additional cost and expense certification verifying the total amount of developer fees actually accrued and paid. If the amount of the tax credits issued and attributable to developer fees exceeds the amount of developer fees actually accrued and paid, the taxpayer is liable to repay 25% of the excess. A taxpayer, or his or her authorized representative, may appeal any official decision on a preliminary or final approval and denial of approval to an independent third-party appeals officer designated by the department. Any entity that receives the tax credit is deemed to have waived the right to present evidence to the State Tax Commission in an appeal of a real estate assessment relating to the ability of the property to generate income (Sections 253.545 - 253.559).

MISSOURI EXPORT INCENTIVE ACT (Sections 135.1550 - 135.1575)

This bill establishes the Missouri Export Incentive Act to

encourage foreign trade through international airports in Missouri. For all taxable years beginning on or after July 1, 2014, an air export tax credit is authorized for a freight forwarder against income taxes with the exception of withholding taxes, corporate franchise taxes, and financial institution taxes for the shipment of cargo on a qualifying outbound flight in an amount equal to 40 cents per chargeable kilo. The Department of Economic Development must index, and the Secretary of State must publish in the Missouri Register, the amount of the air export tax credits to adjust each year depending upon fluctuations in the cost of fuel for over-the-road transportation. The bill specifies the requirements in order for a freight forwarder to receive the credit and how it will be calculated. No credits can be authorized after June 30, 2022.

The maximum amount of tax credits that can be issued each year is specified in the bill. An authorized tax credit that exceeds an applicant's tax liability for a year may be carried forward for six years, or until the full credit is used, whichever occurs first. The tax credits may be transferred, sold, or assigned.

MISSOURI ANGEL INVESTMENT INCENTIVE ACT (Sections 348.273 and 348.274)

This bill establishes the Missouri Angel Investment Incentive Act that is to be administered by the Missouri Technology Corporation (MTC). The primary goal of the act is to encourage individuals to provide seed-capital financing for emerging Missouri businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services. The MTC shall review applications from businesses requesting designation as a qualified Missouri business and allocate tax credits to qualified investors who make cash investments in the qualified Missouri business. The Department must establish its own rules of procedure, including the form and substance of applications to be used by the MTC and the criteria to be considered by the MTC when evaluating a qualified Missouri business and issue tax credits to qualified investors that have been allocated available tax credits by the MTC.

A tax credit must be allowed for an investor's cash investment in the qualified securities of a qualified Missouri business. The credit must be in a total amount equal to 50% of the investor's cash investment in any qualified Missouri business. This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit can be allowed in a year prior to 2014. If the amount by which that portion of the credit allowed exceeds the investor's liability in any one taxable year, beginning in 2014, the remaining portion of the credit may be

carried forward five years or until the total amount of the credit is used, whichever occurs first. If the investor is a permitted entity investor, the credit must be claimed by the owners of the permitted entity investor in proportion to their equity investment in the permitted entity investor. The maximum tax credit allowed is \$50,000 for a single qualified Missouri business per investor who is a natural person or permitted entity investor or a total of \$250,000 for a single year per investor who is a natural person or owner of a permitted entity investor. No tax credits can be allowed for any cash investments in qualified securities for any year beginning after December 31, 2024. The total amount of tax credits that can be allowed cannot exceed \$6 million in any fiscal year. The balance of unissued tax credits may be carried over for issuance in future years until December 31, 2024.

The tax credits must be administered by the MTC. At the beginning of each year, the MTC must equally designate the tax credits available during that year to each geographic region (the states congressional districts). At the beginning of each calendar quarter, the coordinator must allocate to each region one-fourth of the total tax credits designated to the region for the year so that the MTC can allocate tax credits to qualified Missouri businesses and the department can then issue tax credits to qualified investors for cash investments in the qualified Missouri businesses during that quarter.

At the end of each calendar quarter, the MTC must aggregate all the tax credits and reallocate them equally among the regions as soon as possible during the next consecutive calendar quarter. Each region must receive the reallocation in addition to the new allocation of designated tax credits for the quarter. During the fourth calendar quarter, a MTC may allocate the unallocated tax credits to be allocated to any region.

Before an investor may be entitled to receive tax credits, the investor must have made a cash investment in a qualified security of a qualified Missouri business. The business must have been approved by a MTC as a qualified Missouri business before the date on which the cash investment was made. To be designated as a qualified Missouri business, a business must make application to the MTC that includes specified information.

The designation of a business as a qualified Missouri business must be made by the MTC and must be renewed annually. A business must be so designated if the MTC determines specified criteria as established by the department. A business may be considered as a qualified Missouri business under the provisions of the bill if it falls within a standard industrial classification code established by the coordinator. A qualified Missouri business must have the

burden of proof to demonstrate to the MTC the qualifications of the business.

The MTC is authorized to allocate tax credits to qualified Missouri businesses and the department is authorized to issue tax credits to qualified investors in those qualified Missouri businesses. The tax credits must be allocated to those qualified Missouri businesses which, as determined by the MTC, are most likely to provide the greatest economic benefit to the region, the state, or both. The MTC may allocate and the department may issue whole or partial tax credits based on the MTC's assessment of the qualified Missouri business. The MTC may consider numerous factors in the assessment including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model, and the quality and reasonableness of financial projections for the business.

Each qualified Missouri business for which the MTC has allocated tax credits to the qualified investors of the qualified Missouri business must submit to the MTC a report before the tax credits are issued that includes specified information.

The State of Missouri cannot be held liable for any damages to any investor that makes an investment in any qualified security of a qualified Missouri business, any business that applies to be designated as a qualified Missouri business and is turned down, or any investor that makes an investment in a business that applies to be designated as a qualified Missouri business and is turned down.

Each qualified Missouri business must notify, in a timely manner, the MTC that allocated the tax credits and the coordinator of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

The Department must provide specified information to the Department of Revenue on an annual basis. The Department must conduct an annual review of the activities to ensure that tax credits issued under these provisions are issued in compliance with the bill or rules and regulations promulgated by the MTC or the Department. If the Department determines that a business is not in substantial compliance to maintain its designation, the Department, by written notice, may inform the business that it will lose its designation as a qualified Missouri business 120 days from the date of mailing the notice unless the business corrects the deficiencies and is once again in compliance with the requirements for designation. After the 120-day period, if the qualified Missouri business is

still not in compliance, the Department may send a notice of loss of designation to the business, the MTC, the Director of the Department of Revenue, and to all known investors in the business. A business may lose its designation as a qualified Missouri business by moving its headquarters outside of Missouri or a substantial number of the jobs created in Missouri to a location outside Missouri within 10 years after receiving financial assistance under the provisions of the substitute. In the event that a business loses its designation as a qualified Missouri business, it will be precluded from being issued any additional tax credits with respect to the business, must be precluded from being approved as a qualified Missouri business, and must repay any financial assistance to the MTC in an amount to be determined by the MTC. Each qualified Missouri business that loses its designation must enter into a repayment agreement with the MTC specifying the terms of the repayment obligation.

Investors in a qualified Missouri business must be entitled to keep all of the tax credits properly issued to the investors under these provisions.

The portions of documents and other materials submitted to the MTC or the Department that contain trade secrets must be kept confidential and must be maintained in a secured environment by the MTC and the Department.

Any qualified investor who makes a cash investment in a qualified security of a qualified Missouri business may transfer the tax credits to any natural person. Only the full credit for any one investment must be transferred and this interest must only be transferred one time. Documentation of any tax credit transfer must be provided by the qualified investor in the manner required by the Department.

Each qualified Missouri business for which tax credits have been issued must report specified information to the MTC on an annual basis, on or before February 1. The MTC and the Department must also report annually, on or before April 1, to the Governor; Director of the Department of Economic Development; President Pro Tem of the Senate and the Speaker of the House.

Any violation of the reporting requirements may be grounds for the loss of designation of the qualified Missouri business, and the business must be subject to the specified restrictions.

The provisions of the bill expire December 31, 2024.