

FIRST REGULAR SESSION

SENATE BILL NO. 436

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR McKENNA.

Read 1st time February 28, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1947S.01I

AN ACT

To repeal section 620.495, RSMo, and to enact in lieu thereof one new section relating to small business incubators.

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

Section A. Section 620.495, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 620.495, to read as follows:

620.495. 1. This section shall be known as the "Small Business Incubators Act".

2. As used in this section, unless the context clearly indicates otherwise, the following words and phrases shall mean:

(1) "Department", the department of economic development;

(2) "Incubator", a program in which small units of space may be leased by a tenant and in which management maintains or provides access to business development services for use by tenants or a program without infrastructure in which participants avail themselves of business development services to assist in the growth of their start-up small businesses;

(3) "Local sponsor" or "sponsor", an organization which enters into a written agreement with the department to establish, operate and administer a small business incubator program or to provide funding to an organization which operates such a program;

(4) "Participant", a sole proprietorship, business partnership, **limited liability company**, or corporation operating a business for profit through which the owner avails himself or herself of business development services in an incubator program;

(5) "Tenant", a sole proprietorship, business partnership, **limited**

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

20 **liability company**, or corporation operating a business for profit and leasing or
21 otherwise occupying space in an incubator.

22 3. There is hereby established under the direction of the department a
23 loan, loan guarantee and grant program for the establishment, operation and
24 administration of small business incubators, to be known as the "Small Business
25 Incubator Program". A local sponsor may submit an application to the
26 department to obtain a loan, loan guarantee or grant to establish an
27 incubator. Each application shall:

28 (1) Demonstrate that a program exists that can be transformed into an
29 incubator at a specified cost;

30 (2) Demonstrate the ability to directly provide or arrange for the provision
31 of business development services for tenants and participants of the
32 incubator. These services shall include, but need not be limited to, financial
33 consulting assistance, management and marketing assistance, business education,
34 and physical services;

35 (3) Demonstrate a potential for sustained use of the incubator program by
36 eligible tenants and participants, through a market study or other means;

37 (4) Demonstrate the ability to manage and operate the incubator program;

38 (5) Include such other information as the department may require through
39 its guidelines.

40 4. The department shall review and accept applications based on the
41 following criteria:

42 (1) Ability of the local sponsor to carry out the provisions of this section;

43 (2) Economic impact of the incubator on the community;

44 (3) Conformance with areawide and local economic development plans, if
45 such exist;

46 (4) Location of the incubator, in order to encourage geographic
47 distribution of incubators across the state.

48 5. Loans, loan guarantees and grants shall be administered in the
49 following manner:

50 (1) Loans awarded or guaranteed and grants awarded shall be used only
51 for the acquisition and leasing of land and existing buildings, the rehabilitation
52 of buildings or other facilities, construction of new facilities, the purchase of
53 equipment and furnishings which are necessary for the creation and operation of
54 the incubator, and business development services including, but not limited to,
55 business management advising and business education;

56 (2) Loans, loan guarantees and grants may not exceed fifty percent of total
57 eligible project costs;

58 (3) Payment of interest and principal on loans may be deferred at the
59 discretion of the department.

60 6. A local sponsor, or the organization receiving assistance through the
61 local sponsor, shall have the following responsibilities and duties in establishing
62 and operating an incubator with assistance from the small business incubator
63 program:

64 (1) Secure title on a facility for the program or a lease of a facility for the
65 program;

66 (2) Manage the physical development of the incubator program, including
67 the provision of common conference or meeting space;

68 (3) Furnish and equip the program to provide business services to the
69 tenants and participants;

70 (4) Market the program and secure eligible tenants and participants;

71 (5) Provide financial consulting, marketing and management assistance
72 services or arrange for the provision of these services for tenants and participants
73 of the incubator, including assistance in accessing private financial markets;

74 (6) Set rental and service fees;

75 (7) Encourage the sharing of ideas between tenants and participants and
76 otherwise aid the tenants and participants in an innovative manner while they
77 are within the incubator;

78 (8) Establish policies and criteria for the acceptance of tenants and
79 participants into the incubator and for the termination of occupancy of tenants
80 so as to maximize the opportunity to succeed for the greatest number of tenants,
81 consistent with those specified in this section;

82 **(9) Enter into an agreement with participants and tenants**
83 **establishing policies and obligations requiring participants and tenants**
84 **to deliver to the local sponsor annually, upon leaving the incubator**
85 **program, the information necessary for the local sponsor to provide to**
86 **the department the annual reports required under subsection 7 of this**
87 **section.**

88 7. The department:

89 (1) May adopt such rules, statements of policy, procedures, forms and
90 guidelines as may be necessary for the implementation of this section. **Any rule**
91 **or portion of a rule, as that term is defined in section 536.010 that is**

92 created under the authority delegated in this section shall become
93 effective only if it complies with and is subject to all of the provisions
94 of chapter 536, and, if applicable, section 536.028. This section and
95 chapter 536 are nonseverable and if any of the powers vested with the
96 general assembly pursuant to chapter 536, to review, to delay the
97 effective date, or to disapprove and annul a rule are subsequently held
98 unconstitutional, then the grant of rulemaking authority and any rule
99 proposed or adopted after August 28, 2013, shall be invalid and void;

100 (2) May make loans, loan guarantees and grants to local sponsors for
101 incubators;

102 (3) Shall ensure that local sponsors receiving loans, loan guarantees or
103 grants meet the conditions of this section;

104 (4) Shall receive and evaluate annual reports from local sponsors. Such
105 annual reports shall include, but need not be limited to, a financial statement for
106 the incubator, evidence that all tenants and participants in the program are
107 eligible under the terms of this section, [and] a list of companies in the incubator,
108 **and a report on the continuing performance of all participants and**
109 **tenants which have left the incubator during the preceding five-year**
110 **period;**

111 (5) Shall conduct a site visit to each incubator at least once per
112 year.

113 8. The department of economic development is also hereby authorized to
114 review any previous loans made under this program and, where appropriate in
115 the department's judgment, convert such loans to grant status.

116 9. On or before January first of each year, the department shall provide
117 a report to the governor, the chief clerk of the house of representatives and the
118 secretary of the senate which shall include, but need not be limited to:

119 (1) The number of applications for incubators submitted to the
120 department;

121 (2) The number of applications for incubators approved by the
122 department;

123 (3) The number of incubators created through the small business
124 incubator program;

125 (4) The number of tenants and participants engaged in each incubator;

126 (5) The number of jobs provided by each incubator and tenants and
127 participant of each incubator;

128 (6) The occupancy rate of each incubator;

129 (7) The number of firms still operating in the state after leaving
130 incubators and the number of jobs they have provided.

131 10. There is hereby established in the state treasury a special fund to be
132 known as the "Missouri Small Business Incubators Fund", which shall consist of
133 all moneys which may be appropriated to it by the general assembly, and also any
134 gifts, contributions, grants or bequests received from federal, private or other
135 sources. Moneys for loans, loan guarantees and grants under the small business
136 incubator program may be obtained from appropriations made by the general
137 assembly from the Missouri small business incubators fund. Any moneys
138 remaining in the Missouri small business incubators fund at the end of any fiscal
139 year shall not lapse to the general revenue fund, as provided in section 33.080,
140 but shall remain in the Missouri small business incubators fund.

141 11. For any taxable year beginning after December 31, 1989, a taxpayer,
142 including any charitable organization which is exempt from federal income tax
143 and whose Missouri unrelated business taxable income, if any, would be subject
144 to the state income tax imposed under chapter 143, shall be entitled to a tax
145 credit against any tax otherwise due under the provisions of chapter 143, or
146 chapter 147, or chapter 148, excluding withholding tax imposed by sections
147 143.191 to 143.265, in the amount of fifty percent of any amount contributed by
148 the taxpayer to the Missouri small business incubators fund during the taxpayer's
149 tax year or any contribution by the taxpayer to a local sponsor after the local
150 sponsor's application has been accepted and approved by the department. The
151 tax credit allowed by this subsection shall be claimed by the taxpayer at the time
152 he files his return and shall be applied against the income tax liability imposed
153 by chapter 143, or chapter 147, or chapter 148, after all other credits provided by
154 law have been applied. That portion of earned tax credits which exceeds the
155 taxpayer's tax liability may be carried forward for up to five years. [The
156 aggregate of all tax credits authorized under this section shall not exceed five
157 hundred thousand dollars in any taxable year.] **Tax credits granted to a**
158 **partnership, a limited liability company taxed as a partnership, or**
159 **multiple owners of property shall be passed through to the partners,**
160 **members, or owners respectively pro rata based on their share of**
161 **ownership or pursuant to an executed agreement among the partners,**
162 **members, or owners documenting an alternate distribution**
163 **method. The maximum calendar year annual tax credits issued for the**

164 **entire program under this section shall not exceed two million dollars.**

165 12. Notwithstanding any provision of Missouri law to the contrary, any
166 taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits
167 allowed in subsection 11 of this section under the terms and conditions prescribed
168 in subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the
169 assignor for the purpose of this subsection, may sell, assign, exchange or
170 otherwise transfer earned tax credits:

171 (1) For no less than seventy-five percent of the par value of such credits;
172 and

173 (2) In an amount not to exceed one hundred percent of annual earned
174 credits.

175 The taxpayer acquiring earned credits, hereinafter the assignee for the purpose
176 of this subsection, may use the acquired credits to offset up to one hundred
177 percent of the tax liabilities otherwise imposed by chapter 143, or chapter 147,
178 or chapter 148 excluding withholding tax imposed by sections 143.191 to
179 143.265. Unused credits in the hands of the assignee may be carried forward for
180 up to five years. The assignor shall enter into a written agreement with the
181 assignee establishing the terms and conditions of the agreement and shall perfect
182 such transfer by notifying the department of economic development in writing
183 within thirty calendar days following the effective day of the transfer and shall
184 provide any information as may be required by the department of economic
185 development to administer and carry out the provisions of this section. The
186 director of the department of economic development shall prescribe the method
187 for submitting applications for claiming the tax credit allowed under subsection
188 11 of this section and shall, if the application is approved, certify to the director
189 of revenue that the taxpayer claiming the credit has satisfied all the
190 requirements specified in this section and is eligible to claim the credit.

191 **13. The department shall review applications and approve local**
192 **sponsors for allocation of tax credits under this section on a quarterly**
193 **basis. The tax credits approved for allocation shall be awarded during**
194 **the program period for each local sponsor, taking into account the**
195 **department's best estimate of available tax credits in future years. The**
196 **department shall allocate annually to local sponsors the tax credits**
197 **under this section. There is no limit on the number of periods a local**
198 **sponsor may participate in the program under this section.**

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