

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 861

98TH GENERAL ASSEMBLY

Reported from the Committee on Jobs, Economic Development and Local Government, February 25, 2016, with recommendation that the Senate Committee Substitute do pass.

4514S.05C

ADRIANE D. CROUSE, Secretary.

AN ACT

To amend chapters 68 and 143, RSMo, by adding thereto five new sections relating to transportation facilities.

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

Section A. Chapters 68 and 143, RSMo, are amended by adding thereto five new sections, to be known as sections 68.075, 143.2100, 143.2105, 143.2110, and 143.2115, to read as follows:

68.075. 1. This section shall be known and may be cited as the "Advanced Industrial Manufacturing Zones Act".

2. As used in this section, the following terms shall mean:

(1) "AIM zone", an area identified through a resolution passed by the port authority board of commissioners appointed under section 68.045 that is being developed or redeveloped for any purpose so long as any infrastructure and building built or improved is in the development area. The port authority board of commissioners shall file an annual report indicating the established AIM zones with the department of revenue;

(2) "New job", the number of full-time employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time employees at related facilities below the related facility base employment. No job that was created prior to the date of the notice of intent shall be deemed a new job. An employee that spends less than fifty percent of the employee's work time at the facility is still considered to be located at a facility if the employee receives his or her directions and control from that facility, is on the facility's payroll, one hundred percent of the employee's

20 income from such employment is Missouri income, and the employee is
21 paid at or above the state average wage.

22 3. Any port authority located in this state may establish an AIM
23 zone. Such zone may only include the area within the port authority's
24 jurisdiction and may include any such area. The port authority shall
25 determine the boundaries for each AIM zone, and more than one AIM
26 zone may exist within the port authority's jurisdiction.

27 4. Fifty percent of the state tax withholdings imposed by sections
28 143.191 to 143.265 on new jobs within such zone after development or
29 redevelopment has commenced shall not be remitted to the general
30 fund of the state of Missouri. Such moneys shall be deposited into the
31 port authority AIM zone fund established under subsection 5 of this
32 section for the purpose of continuing to expand, develop, and redevelop
33 AIM zones identified by the port authority board of commissioners and
34 may be used for managerial, engineering, legal, research, promotion,
35 planning, satisfaction of bonds issued under section 68.040, and any
36 other expenses.

37 5. There is hereby created in the state treasury the "Port
38 Authority AIM Zone Fund", which shall consist of money collected
39 under this section. The state treasurer shall be custodian of the fund
40 and shall approve disbursements from the fund in accordance with
41 sections 30.170 and 30.180 to the port authorities from which the funds
42 were collected, less the pro-rata portion appropriated by the general
43 assembly to be used solely for the administration of this section which
44 shall not exceed ten percent of the total amount collected within the
45 zones of a port authority. Notwithstanding the provisions of section
46 33.080 to the contrary, any moneys remaining in the fund at the end of
47 the biennium shall not revert to the credit of the general revenue
48 fund. The state treasurer shall invest moneys in the fund in the same
49 manner as other funds are invested. Any interest and moneys earned
50 on such investments shall be credited to the fund.

51 6. The port authority shall approve any projects that begin
52 construction and disperse any money collected under this section. The
53 port authority shall submit an annual budget for the funds to the
54 department of economic development explaining how and when such
55 money will be spent.

56 7. The provision of section 23.253 notwithstanding, no AIM zone

57 may be established after August 28, 2023. Any AIM zone created prior
58 to that date shall continue to exist and be coterminous with the
59 retirement of all debts incurred under subsection 4 of this section. No
60 debts may be incurred or reauthorized using AIM zone revenue after
61 August 28, 2023.

143.2100. 1. As used in sections 143.2100 to 143.2115, unless the
2 context requires a different meaning, the following terms shall mean:

3 (1) "Deduction", an amount subtracted from the taxpayer's
4 Missouri adjusted gross income to determine Missouri taxable income
5 for the tax year in which such deduction is claimed;

6 (2) "Department", the department of economic development;

7 (3) "Director", the director of the department of economic
8 development;

9 (4) "Taxpayer", a person, firm, partner in a firm, member of a
10 limited liability company, corporation, or shareholder in an S
11 corporation doing business in the state of Missouri and subject to the
12 state income tax imposed by the provisions of chapter 143, or a
13 corporation subject to the annual corporation franchise tax imposed by
14 the provisions of chapter 147, or an insurance company paying an
15 annual tax on its gross premium receipts in this state, or other
16 financial institution paying taxes to the state of Missouri or any
17 political subdivision of this state under the provisions of chapter 148,
18 or an express company which pays an annual tax on its gross receipts
19 in this state under chapter 153.

20 2. Prior to March 1, 2018, and every two years thereafter, the
21 department, with information provided by the port authorities,
22 airports, and the department of revenue, shall provide a report on the
23 deductions claimed under sections 143.2100 to 143.2115. Such report
24 shall include the following:

25 (1) The names and locations of participating companies;

26 (2) The annual amount of benefits provided;

27 (3) The estimated net state fiscal impact, including both direct
28 and indirect new state taxes derived from the program;

29 (4) The number of new jobs created;

30 (5) The average wages of each project; and

31 (6) The types of qualified companies using the program.

32 3. The department shall promulgate rules to implement the

33 provisions of sections 143.2100 to 143.2115. Any rule or portion of a
34 rule, as that term is defined in section 536.010 that is created under the
35 authority delegated in this section shall become effective only if it
36 complies with and is subject to all of the provisions of chapter 536, and,
37 if applicable, section 536.028. This section and chapter 536 are
38 nonseverable and if any of the powers vested with the general assembly
39 pursuant to chapter 536, to review, to delay the effective date, or to
40 disapprove and annul a rule are subsequently held unconstitutional,
41 then the grant of rulemaking authority and any rule proposed or
42 adopted after August 28, 2016, shall be invalid and void.

143.2105. 1. As used in this section, unless the context clearly
2 indicates otherwise, the following terms shall mean:

3 (1) "Airport", any publicly or privately owned facility located
4 within Missouri through which cargo is transported by way of airplane
5 to or from destinations outside the state and which handles cargo
6 owned by third parties in addition to cargo owned by the airport's
7 owner;

8 (2) "Base year port cargo volume", the total amount of net tons
9 of noncontainerized cargo or twenty-foot equivalent units (TEUs) of
10 cargo actually transported by way of a waterborne ship, waterborne
11 vehicle, or airplane through a water port facility or airport during the
12 period from January 1, 2015, through December 31, 2015. Base year
13 port cargo volume shall be at least seventy-five net tons of
14 noncontainerized cargo or ten loaded TEUs for a taxpayer to be eligible
15 for the deductions claimed under this section. For a taxpayer that does
16 not transport that amount in the year ending December 31, 2015,
17 including a taxpayer who locates to Missouri after December 31, 2015,
18 the base year port cargo volume will be measured by the initial
19 January first through December thirty-first calendar year in which it
20 meets the requirements of seventy-five net tons of noncontainerized
21 cargo or ten loaded TEUs. Base year port cargo volume shall be
22 recalculated each calendar year after the initial base year;

23 (3) "Major facility", a new facility to be located in Missouri that
24 is projected to import or export cargo through a water port facility or
25 airport in excess of twenty-five thousand TEUs or the noncontainerized
26 cargo equivalent in its first calendar year;

27 (4) "Port cargo volume", the total amount of net tons of

28 noncontainerized cargo or containers measured in TEUs of cargo
29 transported by way of a waterborne ship, waterborne vehicle, or
30 airplane through a water port facility or airport;

31 (5) "TEU" or "Twenty-foot equivalent unit", a volumetric measure
32 based on the size of a container that is twenty feet long by eight feet
33 wide by eight feet, six inches high. If using weight as a measure, then
34 one TEU shall equal sixteen tons of noncontainerized cargo; and

35 (6) "Water port facility", any publicly or privately owned facility
36 located within Missouri through which cargo is transported by way of
37 a waterborne ship or vehicle to or from destinations outside the state
38 and which handles cargo owned by third parties in addition to cargo
39 owned by the water port facility's owner.

40 2. (1) For taxable years beginning on or after January 1, 2017,
41 but before January 1, 2023, a taxpayer engaged in the manufacturing
42 of goods or the distribution of manufactured goods that uses water port
43 facilities or airports in this state and increases its port cargo volume
44 at these facilities by a minimum of five percent in a single calendar
45 year over its base year port cargo volume shall be allowed to claim a
46 deduction in an amount determined by the department. The
47 department may waive the requirement that port cargo volume be
48 increased by a minimum of five percent over base year port cargo
49 volume for any taxpayer that qualifies as a major facility.

50 (2) Qualifying taxpayers that increase their port cargo volume
51 by a minimum of five percent in a qualifying calendar year shall be
52 allowed to claim a fifty-dollar deduction for each TEU or the
53 noncontainerized cargo equivalent above the base year port cargo
54 volume. A qualifying taxpayer that is a major facility as defined in this
55 section shall be allowed to claim a fifty-dollar deduction for each TEU
56 or the noncontainerized cargo equivalent transported through a water
57 port facility or airport during the major facility's first calendar year.
58 A qualifying taxpayer shall not claim a deduction of more than two
59 hundred fifty thousand dollars for each calendar year except as
60 provided for in subdivision (2) of subsection 3 of this section. The
61 maximum amount of deductions for all qualifying taxpayers under this
62 section shall not exceed three million five hundred thousand dollars for
63 each calendar year.

64 (3) The deduction may be claimed by the taxpayer as provided

65 in subdivision (1) of this subsection only if the taxpayer owns the cargo
66 at the time the water port facilities or airports are used.

67 3. (1) For every year in which a taxpayer claims the deduction,
68 the taxpayer shall submit an application to the department by March
69 first of the calendar year after the calendar year in which the increase
70 in port cargo volume occurs. The taxpayer shall attach a schedule to
71 the taxpayer's application to the department with the following
72 information and any other information requested by the department:

73 (a) A description of how the base year port cargo volume and the
74 increase in port cargo volume were determined;

75 (b) The amount of the base year port cargo volume;

76 (c) The amount of the increase in port cargo volume for the
77 taxable year stated both as a percentage increase and as a total
78 increase in net tons of noncontainerized cargo and TEUs of cargo,
79 including information that demonstrates an increase in port cargo
80 volume in excess of the minimum amount required to claim the
81 deductions under this section; and

82 (d) Any deduction utilized by the taxpayer in prior years.

83 (2) The taxpayer shall claim the deduction on its income tax
84 return in a manner prescribed by the department of revenue, and the
85 department of revenue may require a copy of the certification form
86 issued by a Missouri port authority or airport be attached to the return
87 or otherwise provided.

143.2110. 1. As used in this section, unless the context clearly
2 indicates otherwise, the term "international trade facility" shall mean
3 a company that:

4 (1) Is doing business in the state and engaged in water port or
5 airport related activities including, but not limited to, warehousing,
6 distribution, freight forwarding and handling, and goods processing;

7 (2) Has the sole discretion and authority to move cargo in
8 containers or noncontainerized, originating or terminating in the state;

9 (3) Uses water-connected port facilities or airport facilities
10 located in the state; and

11 (4) Uses airplanes, barges, trucks, or rail systems to move cargo,
12 in containers or noncontainerized, through water port facilities or
13 airports in the state.

14 2. For taxable years beginning on or after January 1, 2017, but

15 before January 1, 2023, a company that is an international trade facility
16 shall be allowed a twenty-five-dollar deduction per TEU or equivalent
17 of noncontainerized cargo moved by airplane, barge, or rail.

18 3. In no case shall more than two million dollars in deductions
19 be claimed under this section in any fiscal year of the state. The
20 international trade facility shall not be allowed to claim any deduction
21 under this section unless it has applied to the department for the
22 deduction and the department has approved the deduction. The
23 department shall determine the deduction amount allowable for the
24 year and provide a written certification to the international trade
25 facility, which certification shall report the amount of the deduction
26 approved by the department. The international trade facility shall
27 attach the certification to the applicable tax return.

143.2115. 1. As used in this section, unless the context requires
2 a different meaning, the following terms shall mean:

3 (1) "Affiliated companies", two or more companies related to each
4 other so that:

5 (a) One company owns at least eighty percent of the voting
6 power of the other or others; or

7 (b) The same interest owns at least eighty percent of the voting
8 power of two or more companies;

9 (2) "Capital investment", the amount properly chargeable to a
10 capital account for improvements to rehabilitate or expand depreciable
11 real property placed in service during the taxable year and the cost of
12 machinery, tools, and equipment used in an international trade facility
13 directly related to the movement of cargo. "Capital investment"
14 includes expenditures associated with any exterior, structural,
15 mechanical, or electrical improvements necessary to expand or
16 rehabilitate a building for commercial or industrial use and
17 excavations, grading, paving, driveways, roads, sidewalks, landscaping,
18 or other land improvements. For purposes of this section, machinery,
19 tools, and equipment shall be deemed to include only that property
20 placed in service by the international trade facility on or after January
21 1, 2017. Machinery, tools, and equipment excludes property:

22 (a) For which a deduction under this section was previously
23 granted;

24 (b) Placed in service by the taxpayer, a related party as defined

25 in Subsection (b) of Section 267 of the Internal Revenue Code, as
26 amended, or by a trade or business under common control as described
27 in Subsection (b) of Section 52 of the Internal Revenue Code, as
28 amended; or

29 (c) Previously in service in the state that has a basis in the
30 hands of the person acquiring it, determined in whole or in part by
31 reference to the basis of such property in the hands of the person from
32 whom it was acquired or Subsection (a) of Section 1014 of the Internal
33 Revenue Code, as amended. "Capital investment" shall not include:

- 34 a. The cost of acquiring any real property or building;
- 35 b. The cost of furnishings;
- 36 c. Any expenditure associated with appraisal, architectural,
37 engineering, or interior design fees;
- 38 d. Loan fees, points, or capitalized interest;
- 39 e. Legal, accounting, realtor, sales and marketing, or other
40 professional fees;
- 41 f. Closing costs, permit fees, user fees, zoning fees, impact fees,
42 and inspection fees;
- 43 g. Bids, insurance, signage, utilities, bonding, copying, rent loss,
44 or temporary facilities costs incurred during construction;
- 45 h. Utility hook-up or access fees;
- 46 i. Outbuildings; or
- 47 j. The cost of any well or septic system;

48 (3) "Deduction year", the first taxable year following the taxable
49 year in which the international trade facility commenced or expanded
50 its operations. A separate deduction year and a three-year allowance
51 shall exist for each distinct international trade facility of a single
52 taxpayer;

53 (4) "International trade facility", a company that:

- 54 (a) Is engaged in port related activities including, but not limited
55 to, warehousing, distribution, freight forwarding and handling, and
56 goods processing;
- 57 (b) Uses water-connected port facilities or airports located in the
58 state; and
- 59 (c) Transports at least ten percent more cargo, measured in TEU
60 containers or the noncontainerized cargo equivalent, through water-
61 connected port facilities or airport in the state during the taxable year

62 than was transported by the company through such facilities during the
63 preceding taxable year;

64 (5) "New, permanent full-time position", a job of indefinite
65 duration, created by the company after establishing or expanding an
66 international trade facility in the state, requiring a minimum of thirty-
67 five hours of employment per week for each employee for the entire
68 normal year of the company's operations, or a position of indefinite
69 duration that requires a minimum of thirty-five hours of employment
70 per week for each employee for the portion of the taxable year that the
71 employee was initially hired for, or transferred to the international
72 trade facility in the state. Seasonal or temporary positions, or a job
73 created if a job function is shifted from an existing location in the state
74 to the international trade facility, and positions in building and
75 grounds maintenance, security, and other such positions that are
76 ancillary to the principal activities performed by the employees at the
77 international trade facility shall not qualify as new, permanent full-
78 time positions;

79 (6) "Normal year", at least forty-eight weeks in a calendar year;

80 (7) "Qualified full-time employee", an employee filling a new,
81 permanent full-time position in an international trade facility in the
82 state;

83 (8) "Qualified trade activities", the completed exportation or
84 importation of at least one International Organization for
85 Standardization ocean container or the noncontainerized equivalent
86 with a minimum twenty-foot length, through a Missouri port authority-
87 operated cargo facility or an airport in this state. An export container
88 or the noncontainerized cargo equivalent with an ultimate
89 international destination shall be loaded on a barge or airplane and an
90 import container or the noncontainerized cargo equivalent originating
91 from an international destination shall be discharged from a barge or
92 airplane at such facility.

93 2. For taxable years beginning on or after January 1, 2017, but
94 before January 1, 2023, a taxpayer satisfying the requirements of this
95 section shall be allowed to claim a deduction in an amount equal to
96 either three thousand five hundred dollars per qualified full-time
97 employee that results from increased qualified trade activities by the
98 taxpayer or an amount equal to two percent of the capital investment

99 made by the taxpayer to facilitate the increased qualified trade
100 activities. The election of which deduction amount to claim shall be the
101 responsibility of the taxpayer. Both deductions shall not be claimed for
102 the same activities that occur within a calendar year. The portion of
103 the three thousand five hundred dollars deduction earned with respect
104 to any qualified full-time employee who works in the state for less than
105 twelve full months during the deduction year shall be determined by
106 multiplying the deduction amount by a fraction, the numerator of
107 which is the number of full months such employee worked for the
108 international trade facility in the state during the deduction year and
109 the denominator of which is twelve.

110 3. In no case shall more than five hundred thousands dollars in
111 deductions be claimed under this section in any fiscal year of the
112 state. The taxpayer shall not be allowed to claim any deduction under
113 this section unless it has applied to the department for the deduction
114 and the department has approved the deduction. The department shall
115 determine the deduction amount allowable for the taxable year and
116 shall provide a written certification to the taxpayer, which certification
117 shall report the amount of the deduction approved by the
118 department. The taxpayer shall attach the certification to the
119 applicable income tax return.

120 4. The amount of the deduction allowed under this section shall
121 not exceed fifty percent of the taxpayer's Missouri adjusted gross
122 income.

123 5. No deduction shall be earned for any employee:

124 (1) For whom a deduction under this section was previously
125 earned by a related party as defined in Subsection (b) of Section 267 of
126 the Internal Revenue Code, as amended, or a trade or business under
127 common control as described in Subsection (b) of Section 52 of the
128 Internal Revenue Code, as amended;

129 (2) Who was previously employed in the same job function in
130 Missouri by a related party as defined in Subsection (b) of Section 267
131 of the Internal Revenue Code, as amended, or a trade or business under
132 common control as described in Subsection (b) of Section 52 of the
133 Internal Revenue Code, as amended; or

134 (3) Whose job function was previously performed at a different
135 location in Missouri by an employee of the taxpayer, by a related party

136 as defined in Subsection (b) of Section 267 of the Internal Revenue
137 Code, as amended, or by a trade or business under common control as
138 described in Subsection (b) of Section 52 of the Internal Revenue Code,
139 as amended.

140 6. For the purposes of this section, two or more affiliated
141 companies may elect to aggregate the number of jobs created for
142 qualified full-time employees or the amounts of capital investments as
143 the result of the establishment or expansion by the individual
144 companies in order to qualify for the deduction allowed under this
145 section.

146 7. Recapture of the deduction amount under the following
147 circumstances shall be accomplished by increasing the tax in any of the
148 five years succeeding the taxable year in which a deduction has been
149 earned pursuant to this section if the number of qualified full-time
150 employees falls below the average number of qualified full-time
151 employees during the taxable year. The Missouri taxable income
152 increase amount shall be determined by recalculating the deduction
153 that would have been earned for the original taxable year using the
154 decreased number of qualified full-time employees and subtracting the
155 recalculated deduction amount from the amount previously earned. In
156 the event that the average number of qualified full-time employees
157 employed at an international trade facility falls below the number
158 employed by the taxpayer prior to claiming any deductions under this
159 section in any of the five taxable years succeeding the year in which
160 the deductions were earned, all deductions earned with respect to the
161 international trade facility shall be recaptured. No deduction amount
162 shall be recaptured more than once under this subsection. Any
163 recapture under this subsection shall reduce deductions earned, but
164 not yet allowed, before the taxpayer's Missouri taxable income is
165 increased.

166 8. The department shall issue guidelines for:

167 (1) The computation and recapture of the deductions provided
168 under this section;

169 (2) The establishment of criteria for:

170 (a) International trade facilities;

171 (b) Qualified full-time employees at such facilities; and

172 (c) Capital investments; and

173 **(3) The computation, recapture, and redemption of the**
174 **deductions by affiliated companies.**

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