

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 831

## 89TH GENERAL ASSEMBLY

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Reported from the Committee on Local Government and Economic Development, March 12, 1998, with recommendation that the Senate Committee Substitute do pass.

S3585.02C

TERRY L. SPIELER, Secretary.

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### AN ACT

To repeal sections 447.700, 447.702, 447.704, 447.706 and 447.708, RSMo Supp. 1997, relating to tax credits for economic development purposes, and to enact in lieu thereof six new sections relating to the same subject.

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

Section A. Sections 447.700, 447.702, 447.704, 447.706 and 447.708, RSMo Supp. 1997, are repealed and six new sections enacted in lieu thereof, to be known as sections 447.700, 447.701, 447.702, 447.704, 447.706 and 447.708 to read as follows:

447.700. As used in sections 447.700 to 447.718, the following terms mean:

(1) "Abandoned property", real property previously used for, or which has the potential to be used for, commercial or industrial purposes which reverted to the ownership of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of foreclosure; **or a privately owned property endorsed by the city, or county if the property is not in a city, for inclusion in the program which will be transferred to a person other than the potentially responsible party as defined in chapter 260, RSMo, and has been vacant for a period of not less than three years from the time an application is made to the department of economic development;**

(2) "Allowable cost", all or part of the costs of project facilities, including the costs of acquiring the property, relocating any remaining occupants, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping or furnishing project facilities, **demolition**, site clearance and preparation, supplementing and relocating public capital

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

improvements or utility facilities, designs, plans, specifications, surveys, studies and estimates of costs, expenses necessary or incident to determining the feasibility or practicability of assisting an eligible project or providing project facilities, architectural, engineering and legal service fees and expenses, the costs of conducting any other activities as part of a voluntary remediation and such other expenses as may be necessary or incidental to the establishment or development of an eligible project and reimbursement of moneys advanced or applied by any governmental agency or other person for allowable costs;

(3) **"Applicant", the person that submits an application for consideration of a project or location of real property for financial, tax credit or other assistance under the terms of this act; an applicant may not be a potentially responsible party for environmental contamination of hazardous substances at the eligible project as that term is defined under chapter 260, RSMo;**

(4) "Eligible project", abandoned **or underutilized** property to be acquired, established, expanded, remodeled, rehabilitated or modernized for industry, commerce, distribution or research, or any combination thereof, the operation of which, alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities, attract new businesses to the state, prevent existing businesses from leaving the state and improve the economic welfare of the people of the state. The term "eligible project", without limitation, includes voluntary remediation conducted pursuant to sections 260.565 to 260.575, RSMo. To be an "eligible project" pursuant to sections 447.700 to 447.718, the obligations of the prospective [private party owner/operator] **applicant** and the governmental agency shall be defined in a written agreement signed by both parties. The facility, when completed, shall be operated in compliance with applicable federal, state and local environmental statutes, regulations and ordinances. **An "eligible project" shall be determined by consideration of the entire project. The definition or identification of an "eligible project" shall not be segmented into parts to separate commercial and industrial uses from residential uses;**

[(4)] (5) "Financial assistance", direct loans, loan guarantees, and grants under sections 447.702, 447.704 and 447.706; and tax credits, inducements and abatements under section 447.708;

[(5)] (6) "Governmental action", any action by a state, county or municipal agency relating to the establishment, development or operation of an eligible project and project facilities that the governmental agency has authority to take or provide for the purpose under law, charter or ordinance, including but not limited to, actions relating to contracts and agreements, zoning, building, permits, acquisition and disposition of property, public capital improvements, utility and transportation service, taxation, employee recruitment and training, and liaison and coordination with and among governmental agencies;

[(6)] (7) "Governmental agency", the state, county and municipality and any department, division, commission, agency, institution or authority, including a municipal corporation,

township, and any agency thereof and any other political subdivision or public corporation; the United States or any agency thereof; any agency, commission or authority established pursuant to an interstate compact or agreement and any combination of the above;

[(7)] **(8)** "Person", any individual, firm, partnership, association, limited liability company, corporation or governmental agency, and any combination thereof;

[(8)] **(9)** "Project facilities", buildings, structures and other improvements and equipment and other property or fixtures, excluding small tools, supplies and inventory, and [any one, part or combination of the above, comprising all or part of, or serving or being incidental to,] public capital improvements;

[(9)] **(10)** "Public capital improvements", capital improvements or facilities [that any] **owned by a governmental agency and which such agency** has authority to acquire, pay the costs of, [own,] maintain, relocate or operate, or to contract with other persons to have the same done, including but not limited to, highways, roads, streets, electrical, gas, water and sewer facilities, railroad and other transportation facilities, and air and water pollution control and solid waste disposal facilities;

**(11) "Underutilized", real property of which less than thirty-five percent of the commercially usable space of the property and improvements thereon, are used for their most commercially profitable and economically productive use; or property that was used by the state of Missouri as a correctional center for a period of at least one hundred years and which requires environmental remediation before redevelopment can occur;**

[(10)] **(12)** "Voluntary remediation", an action to remediate hazardous substances and hazardous waste pursuant to sections 260.565 to 260.575, RSMo.

**447.701. 1. The director of the department of economic development may consider the direct and indirect economic benefits projected to be provided by the eligible project. An applicant for funding or tax credit and exemption assistance pursuant to sections 447.702, 447.704, 447.706 and 447.708 may prepare and submit an estimate of the direct and indirect economic benefits in accordance with this section. The department of economic development may accept the applicant's projection of the economic benefit of the eligible project. The total amount of state funding, tax credits or tax exemptions for each eligible project shall be limited to the projected state economic benefit, as determined by the department of economic development.**

**2. In the event the owner sells the abandoned or underutilized property within a five-year period after the receipt of remediation tax credits, grants, loans or loan guarantee, subject to sections 447.700 to 447.718, the owner shall repay a portion of the tax credits and grant funds provided based on the percentage of the owner's investment for the project to the department of economic development's total financial assistance,**

**upon achieving an annual internal rate of return of twenty-five percent. The internal rate of return calculation must be documented by the owner's capital gains tax calculation. Owner investment is equity and debt for the eligible project.**

447.702. 1. The director of economic development, with the approval of the [directors] **director** of the department of natural resources [and department of revenue, and], subject to the other provisions of sections 447.700 to 447.718, may lend moneys in the property reuse fund to persons for the purpose of paying allowable costs of an eligible project if the director determines that:

(1) The project is an eligible project and is economically sound; except that, the costs of remediation may exceed the fair market value of the property prior to redevelopment;

(2) The borrower is unable to finance necessary allowable costs through ordinary financial channels [upon comparable terms], **and that the loan is the least amount necessary to cause the project to occur;**

(3) The amount to be lent from the property reuse fund will not exceed one million dollars of the total allowable costs of the eligible project;

(4) When completed, the **eligible** project [facility will] **is projected to** create not less than ten new jobs [providing not less than an average of thirty-five hours of employment per week per job], or shall retain a business which supplies not less than twenty-five existing jobs, **or a combination thereof**, providing not less than an average of thirty-five hours of employment per week per job. **Such projection shall be made by the department of economic development;**

(5) The eligible project could not be achieved in the local area in which it is to be located if the portion of the project to be financed by the loan instead were to be financed by a loan guarantee under section 447.704; and

(6) The amount of the loan from the property reuse fund to be repaid will be adequately secured by a mortgage, lien, assignment or pledge at such amount and level of priority as the director may require.

2. The determinations of the director of economic development under subsection 1 of this section shall be conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement signed by the director.

3. Fees, charges, rates of interest, times of payment of interest and principal and other terms, conditions and provisions of, and security for, loans made from the property reuse fund pursuant to this section shall be such as the director of economic development determines to be appropriate and in furtherance of the purpose for which the loans are made. The moneys used in making such loans shall be disbursed from the property reuse fund upon the written order of the director. The director shall give special consideration in setting the required job creation ratios and interest rates for loans that are for voluntary remediation actions.

4. The director of economic development may take all actions necessary or appropriate to

collect or otherwise deal with any loan made under this section.

5. The director of economic development may fix service charges for making of a loan. Such charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

447.704. 1. The director of economic development, with the approval of the [directors] **director** of the department of natural resources [and the department of revenue, and], subject to other applicable provisions of sections 447.700 to 447.718, may guarantee loans issued by private financial institutions to persons for the purpose of paying the allowable costs of an eligible project if:

(1) The project otherwise qualifies as an eligible project and is economically sound, except that the costs of remediation may exceed the fair market value of the property prior to redevelopment;

(2) The private lender is unwilling to make the loan without the guarantee, **and that the guarantee is the minimum necessary to cause the loan;**

(3) The amount to be guaranteed will not exceed one million dollars of the total allowable costs of the eligible project;

(4) The loan will be adequately secured by a mortgage, lien, assignment or pledge, at such a level of priority as is acceptable to the lender and the director of economic development; and

(5) When completed, the **eligible** project [facility will] **is projected to** create not less than ten new jobs [providing not less than an average of thirty-five hours of employment per week per job], or shall retain a business which supplies not less than twenty-five existing jobs, **or a combination thereof**, providing not less than an average of thirty-five hours of employment per week per job. **Such projection shall be made by the department of economic development.**

2. The determinations of the director of economic development under subsection 1 of this section shall be conclusive for purposes of the validity of a guarantee agreement signed by the director.

3. Fees, charges, rates of interest, times of payment of interest and principal and other terms, conditions and provisions of, and security for, loans guaranteed from the property reuse fund pursuant to this section shall be such as the director of economic development determines to be appropriate and in furtherance of the purpose for which the guarantees are made. The director shall give special consideration in setting the required job creation ratios and project locations for loan guarantees that are for voluntary remediation actions. Interest rates on such guaranteed loans shall not exceed three percentage points above the prime interest rate and the director may require a lower rate be used as is appropriate based upon the financial merits of the application and financial statement of the borrower. Nor may the term of the underlying loan exceed twenty years.

4. The director of economic development may take all actions necessary or appropriate to collect on loan defaults and deficiencies or otherwise deal with the borrower for any loan guarantee

made under this section. The director of economic development shall enact appropriate regulations establishing guidelines for the property reuse fund guarantee program, including guidelines regarding the manner and timing of payouts of guarantee moneys, the order and manner in which security, other than the underlying abandoned **or underutilized** property, provided by the borrower will be valued, and in the event of default or breach of this program, applied to the reduction of the borrower's debt prior to payment of guarantee moneys to the private lender. [In no event, shall valuation of the borrower's security exceed the amount of proceeds actually collected by the private lender through enforcement of its security interest.]

5. The director of economic development may fix service charges for making of a loan guarantee. Such charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

6. The private lender shall be immune from any liability arising out of the performance of the project, including potential liability from the incomplete or unsuccessful remediation of the facility; its lender status by which it holds indicia of ownership primarily to protect its security interest; and any potential liability arising out of or under the environmental laws of this state pursuant to the protections of sections 427.011 to 427.041, RSMo. Upon written request from a private lender who has foreclosed upon the property of an eligible project and has held the abandoned **or underutilized** property for a period of at least two years, or longer, the director of the department of economic development shall use the guarantee moneys from the property reuse fund to repay the lender the unpaid amount of the defaulted loan [and title to the abandoned property shall revert to the original government agency owner]. Such written request by the private lender shall describe the efforts made to sell the property and, to the extent known, the reasons the property is unable to be sold to a new buyer.

447.706. 1. The director of economic development, with the approval of the [directors] **director** of the department of natural resources [and the department of revenue, and], subject to other applicable provisions of sections 447.700 to 447.718, may issue a grant to a [qualified recipient] **government agency** for the purpose of paying the allowable costs of **public capital improvements needed to cause** an eligible project if:

(1) The project otherwise qualifies as an eligible project and is economically sound[, except that the costs of remediation may exceed the fair market value of the property prior to redevelopment];

(2) The project proposed is a cooperative venture between a municipal or county government and a prospective private purchaser of the facility;

(3) The prospective purchaser is unable to finance the entire cost of the project through ordinary financial channels upon comparable terms and, further, a lender is unwilling to make the loan even with a loan guarantee under section 447.704. [without such a grant;

(4) When completed, the **eligible** project [facility will] **is projected to** create not less than

ten new jobs [providing not less than an average of thirty-five hours of employment per week per job], or shall retain a business which supplies not less than twenty-five existing jobs, **or a combination thereof**, providing not less than an average of thirty-five hours of employment per week per job. **Such projection shall be made by the department of economic development; and**

[(5)] (4) The amount to be issued in a grant shall not exceed one million dollars [of the total allowable costs of the eligible project;

(6) The amount to be issued in a grant shall fully perform the contractual obligations of the municipal or county government in the project with the prospective purchaser; and

(7) For any portion of the prospective purchaser's financial obligation which is financed, such loan shall be adequately secured by a mortgage, lien, assignment or pledge at such a level of priority as is acceptable to the lender and the director of economic development].

2. The determinations of the director of economic development under subsection 1 of this section shall be conclusive for purposes of the validity of a grant agreement signed by the director.

3. [Fees, charges, rates of interest, times of payment of interest and principal and other terms, conditions and provisions of, and security for, loans guaranteed] **Grants** from the property reuse fund pursuant to this section shall be such as the director of economic development determines to be appropriate and in furtherance of the purpose for which the grants are made. The moneys used in making such grants shall be disbursed from the property reuse fund upon written order of the director of economic development. The director shall give special consideration in setting the required job creation ratios and project locations for project grants that are for voluntary remediation actions.

4. The director of economic development shall issue such grants to [the municipal or county government, or agency thereof designated by its mayor or executive officer.] **a governmental agency** to administer and direct the expenditure of the funds for [allowable costs of the eligible project] **public capital improvements**. Such grant money shall not be used to hire or pay additional employees of the recipient governmental agency.

5. The director of economic development may fix service charges for making of a property reuse grant. Such charges shall be payable at such times and place and in such amounts and manner as may be prescribed by the director.

447.708. 1. For eligible projects [which meet the following criteria], the director of the department of economic development, with notice to the directors of the departments of natural resources and revenue, and subject to the other provisions of sections 447.700 to 447.718, may not create a new enterprise zone but may decide that a prospective [purchaser and] operator of a facility being remedied and renovated pursuant to sections 447.700 to 447.718 may receive the tax credits and exemptions pursuant to sections 135.100 to 135.150, RSMo, and 135.200 to 135.256, RSMo. The tax credits allowed pursuant to this subsection shall be used to offset the tax imposed

by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, **or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo.** [The criteria to be met include:

(1) The eligible project is located in an area in which:

(a) A large number of jobs have been lost;

(b) A large number of employers have closed;

(c) A large percentage of available production capacity is idle; or

(d) Meets the requirements prescribed in subdivisions (3) and (5) of subsection 2 of section 135.207, RSMo. For the purpose of paragraph (a) of this subdivision, "large number of jobs" means one percent or more of the area's population according to the most recent decennial census. For the purpose of paragraph (b) of this subdivision, "large number of employers" means over five if the area is not located in a metropolitan statistical area and over ten if the area is in a metropolitan statistical area. "Metropolitan statistical area" includes those areas prescribed by the United States Department of Commerce;

**(2)] (1) For receipt of the ad valorem tax [exemption, in whole or in part, from one or more of the affected political subdivisions,] abatement pursuant to section 135.215, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs. The city, or county if the eligible project is not located in a city, must provide ad valorem tax abatement at least fifty percent for a period not less than ten years and not more than twenty-five years. As an alternative to ad valorem tax abatement, the city, or county if the eligible project is not located in a city, may authorize tax increment financing, as provided in sections 99.800 to 99.865, RSMo, or other comparable local incentives, as acceptable to the department of economic development, which facilitate the eligible project;**

**[(3)] (2) For receipt of the income tax exemption pursuant to section 135.220, RSMo, and tax credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and 135.225, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof.** For purposes of sections 447.700 to 447.718, the tax credits described in section 135.225, RSMo, are modified as follows: the tax credit shall be four hundred dollars per employee per year, an additional four hundred dollars per year for each employee exceeding the minimum employment thresholds of ten and twenty-five jobs for new and existing businesses, respectively, an additional four hundred dollars per year for each person who is "a person difficult to employ" as defined by section 135.240, RSMo, and investment tax credits at the same amounts and levels as provided in subdivision (4) of section 135.225, RSMo;

**[(4)] (3) For eligibility to receive the income tax refund pursuant to section 135.245, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least**



twenty-five existing jobs, **or combination thereof**, and otherwise comply with the provisions of section 135.245, RSMo, for application and use of the refund and the eligibility requirements of this section;

[(5)] **(4)** The eligible project [facility] operates in compliance with applicable environmental laws and regulations, including permitting and registration requirements, of this state as well as the federal and local requirements;

[(6)] **(5)** The **eligible** project [facility] operator shall file such reports as may be required by the director of economic development or the director's designee;

[(7)] **(6)** The taxpayer may claim **the** state tax credits **authorized by this subsection** and the state income exemption for a period not in excess of ten consecutive tax years. For the purpose of this section, "taxpayer" means an individual proprietorship, partnership or corporation described in section 143.441 or 143.471, RSMo, who operates an eligible project [facility]. The director shall determine the number of years the taxpayer may claim the state tax credits and the state income exemption[. The director's determination shall be made annually, and shall be] based on the **projected net state** economic benefits attributed to the eligible project[; except that, the minimum number of tax periods for which the taxpayer may claim the state tax credits and the state income exemption shall be four. Incentives provided by local governing authorities may be provided for a period not to exceed fifteen years];

[(8)] **(7)** For the purpose of meeting the new job requirement prescribed in subdivisions **(1), (2)[,] and (3) [and (4)]** of this subsection [and subsection 3 of this section], it shall be required that at least ten new jobs be created and maintained during the taxpayer's tax period for which the credits are earned, in the case of an eligible project that does not replace a similar facility in Missouri. "New job" means a person who was not previously employed by the taxpayer or related taxpayer within the twelve-month period immediately preceding the time the person was employed by that taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned. For the purposes of this section, "related taxpayer" has the same meaning as defined in subdivision (9) of section 135.100, RSMo;

[(9)] **(8)** For the purpose of meeting the existing job retention requirement, if the eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, it shall be required that at least twenty-five existing jobs be retained at, and in connection with the eligible project, on a full-time basis during the taxpayer's tax period for which the credits are earned. "Retained job" means a person who was previously employed by the taxpayer or related taxpayer, at a facility similar to the eligible project that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, within the tax period immediately preceding the time the

person was employed by the taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned;

[(10)] (9) In the case where an eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, the owner and operator of the eligible project shall provide the director with a written statement explaining the reason for discontinuing operations at the closed facility. The statement shall include a comparison of the activities performed at the closed facility prior to the date the facility ceased operating, to the activities performed at the eligible project, and a detailed account describing the need and rationale for relocating to the eligible project. If the director finds the relocation to the eligible project significantly impaired the economic stability of the area in which the closed facility was located, and that such move was detrimental to the overall economic development efforts of the state, the director may deny the taxpayer's request to claim tax benefits;

[(11)] (10) Notwithstanding any provision of law to the contrary, for the purpose of this section, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment used at the eligible project during any tax year shall be determined by dividing by twelve, in the case of jobs, the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month of the tax year. If the eligible project is in operation for less than the entire tax year, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment created at the eligible project during any tax year shall be determined by dividing the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month during the portion of the tax year during which the eligible project was in operation, by the number of full calendar months during such period;

[(12)] (11) For the purpose of this section, "new qualified investment" means new business facility investment as defined and as determined in subdivision (7) of section 135.100, RSMo, which is used at and in connection with the eligible project. "New qualified investment" shall not include small tools, supplies and inventory. "Small tools" means tools that are portable and can be hand held.

2. The determination of the director of economic development pursuant to subsection 1 of this section, shall not affect requirements for the prospective purchaser to obtain the approval of the granting of [such tax credits and exemptions] **real property tax abatement or tax increment financing** by the municipal or county government where the eligible project is located.

3. The director of the department of economic development, with the approval of the [directors] **director** of the department of natural resources [and the department of revenue], may,

in addition to the tax credits allowed in subsection 1 of this section, grant a **remediation** tax credit to the [purchaser and operator of an eligible project facility, whether such facility is owned by a governmental agency as defined in subdivision (6) of section 447.700 or by a private party for the full] **applicant for up to one hundred percent of the** costs of materials, supplies, equipment, labor, professional engineering, consulting and architectural fees, permitting fees and expenses, **demolition and asbestos abatement**, and direct utility charges for performing the voluntary remediation activities for the preexisting hazardous substance contamination and releases, including, but not limited to, the costs of performing operation and maintenance of the remediation equipment at the property beyond the year in which the systems and equipment are built and installed at the eligible project and the costs of performing the voluntary remediation activities over a period not in excess of four tax years following the taxpayer's tax year in which the system and equipment were first put into use at the eligible project, provided the remediation activities are the subject of a plan submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to 260.575, RSMo. **The amount of remediation tax credits issued shall be limited to the least amount necessary to cause the project to occur, as determined by the director of the department of economic development.** The director may, with the approval of the director of natural resources, extend the tax credits allowed for performing voluntary remediation maintenance activities, in increments of three-year periods, not to exceed five consecutive three-year periods. The tax credits allowed in this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. The remediation tax credit may be taken in the same tax year in which the [costs are incurred] **tax credits are received** or may be taken [in equal installments] over a period not to exceed twenty years[; provided that, once such an election has been made it cannot be changed]. The project facility [shall otherwise comply with the employment conditions described in subdivisions (2) and (3) of subsection 1 of this section] **is projected to create at least ten new jobs or at least twenty-five retained jobs, or a combination thereof, as determined by the department of economic development. No more than seventy-five percent of** earned remediation tax credits may be [approved only after the director of natural resources issues a "No Further Action" letter or covenant not to sue following completion of the voluntary remediation activities, or at the end of the tax period in which the voluntary remediation costs were incurred and the remediation equipment was capable of being operated, whichever is earlier] **issued when the remediation costs were paid, and the remaining percentage may be issued when the department of natural resources issues a "No Further Action" letter or covenant not to sue following completion of the voluntary remediation activities.** It shall not include any costs associated with ongoing operational environmental compliance of the facility or remediation costs arising out of spills, leaks, or other releases arising out of the ongoing business operations of

the facility.

4. In the exercise of the sound discretion of the director of the department of economic development or the director's designee, the tax credits and exemptions described in this section may be terminated, suspended or revoked, if the eligible project [facility] fails to continue to meet the [condition] **conditions** set forth in this section. In making such a determination, the director shall consider the severity of the condition violation, actions taken to correct the violation, the frequency of any condition violations and whether the actions exhibit a pattern of conduct by the eligible facility owner and operator. The director shall also consider changes in general economic conditions and the recommendation of the director of the department of natural resources, or their designee, concerning the severity, scope, nature, frequency and extent of any violations of the environmental compliance conditions. The [qualified project facility owner or operator] **taxpayer or person claiming the tax credits or exemptions** may appeal the decision regarding termination, suspension or revocation of any tax credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section 135.250, RSMo. The director of the department of economic development shall notify the directors of the departments of natural resources and revenue of the termination, suspension or revocation of any tax credits as determined in this section or pursuant to the provisions of section 447.716.

5. [For purposes of sections 447.700 to 447.718, an eligible facility owner and operator is assumed to be the same person, as that term is defined in sections 447.700 to 447.718. If the facility operator and the facility owner are separate persons, then the operator who directly creates the jobs shall be eligible to qualify for the credits and exemptions described.

6.] Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection 1 of this section and the tax credits otherwise allowed in section 135.110, RSMo, or the tax credits, exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and 135.245, RSMo, respectively, for the same facility for the same tax period.

[7.] **6.** The total amount of the tax credits allowed in **subsection 1 of** section 447.708 may not exceed the greater of:

- (1) That portion of the taxpayer's income attributed to the eligible project; or
- (2) One hundred percent of the total business' income tax if the eligible facility does not replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; fifty percent of the total business' income tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; or twenty-five percent of the total business income if the taxpayer operates, in addition to the eligible facility, any other

facilities in Missouri. In no case shall a taxpayer operating more than one eligible project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business income in any tax period. That portion of the taxpayer's income attributed to the eligible project as referenced in subdivision (1) of this subsection, for which the credits allowed in sections 135.110 and 135.225, RSMo, and subsection 3 of section 447.708, may apply, shall be determined in the same manner as prescribed in subdivision (6) of section 135.100, RSMo. That portion of the taxpayer's franchise tax attributed to the eligible project for which the remediation tax credit may offset, shall be determined in the same manner as prescribed in paragraph (a) of subdivision (6) of section 135.100, RSMo.

**[8.] 7.** Taxpayers claiming the state tax benefits allowed in subdivisions **(2) and (3)** **[and (4)]** of subsection 1 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use. Otherwise, the taxpayer's right to claim such state tax benefits shall be forfeited. Unused business facility and enterprise zone tax credits shall not be carried forward but shall be initially claimed for the tax period during which the eligible project was first capable of being used, and during any applicable subsequent tax periods.

**8.** Taxpayers claiming the remediation tax credit allowed in subsection 3 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use, or during the taxpayer's tax period immediately after the tax period in which the voluntary remediation activities were performed.

**9. [An operator of an eligible project] The recipient of remediation tax credits,** for the purpose of this subsection referred to as assignor, may assign, sell or transfer, in whole or in part, the remediation tax credit allowed in subsection 3 of this section, to any other person, for the purpose of this subsection referred to as assignee, who performed voluntary remediation activities at the eligible project, or to a third party provided that the operator of the eligible project who sells, assigns or transfers such credits uses not less than seventy percent of the proceeds of such transaction to finance, develop or improve the eligible project facility or another property approved by the director as an eligible project]. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address and the assignee's tax period and the amount of tax credits to be transferred. The [assignee shall provide written notice to the director specifying the number of consecutive tax periods the transferred tax credits are to be claimed; except that, the] number of tax periods during which the assignee may subsequently claim the tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor previously claimed the credits before the transfer occurred.

**10.** In the case where an operator and assignor of an eligible project has been certified to claim state tax benefits allowed in subdivisions **(2) and (3)** [and (4)] of subsection 1 of this section, and sells or otherwise transfers title of the eligible project to another taxpayer or assignee who continues the same or substantially similar operations at the eligible project, the director shall allow the assignee to claim the credits for a period of time to be determined by the director; except that, the total number of tax periods the tax credits may be earned by the assignor and the assignee shall not exceed ten. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address, and the assignee's tax period, and the amount of tax credits to be transferred.

[10.] **11.** For the purpose of the state tax benefits described in this section, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, such state benefits shall be allowed to the following:

- (1) The shareholders of the corporation described in section 143.471, RSMo;
- (2) The partners of the partnership. The credit provided in this subsection shall be apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion to their share of ownership on the last day of the taxpayer's tax period.

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