

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 518
90TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, April 13, 1999, with recommendation that the House Committee Substitute for House Bill No. 518 Do Pass.

ANNE C. WALKER, Chief Clerk

L2197.04C

AN ACT

To repeal section 620.495, RSMo 1994, sections 67.1300, 135.750 and 620.1039, RSMo Supp. 1998, and both versions of section 67.1000 as they appear in RSMo Supp. 1998, relating to the provision of economic development incentives other than for education or corporate franchise taxes, and to enact in lieu thereof eleven new sections relating to the same subject.

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

Section A. Section A. Section 620.495, RSMo 1994, sections 67.1300, 135.750 and 620.1039, RSMo Supp. 1998, and both versions of section 67.1000 as they appear in RSMo Supp. 1998, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 67.1000, 67.1300, 135.750, 620.1039, 1, 2, 3, 4, 5, 6 and 7, to read as follows:

67.1000. The governing body of any county or of any city which is the county seat of any county or which now or hereafter has a population of more than three thousand five hundred inhabitants and which has heretofore been authorized by the general assembly, or of any other city which has a population of more than eighteen thousand and less than forty-five thousand inhabitants located in a county of the first classification with a population over two hundred thousand adjacent to a county of the first classification with a population over nine hundred thousand, **or of any county of the third classification which has a population of more than forty thousand and which becomes a county of the second classification after December 31, 1999,** may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels situated in the city or county, which shall be not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at an election permitted under section 115.123, RSMo, a proposal to authorize the governing body of the city or county to impose a tax [under] **pursuant to** the provisions of this section and section 67.1002. The tax authorized by this section and section 67.1002 shall be in addition to the charge for the sleeping room and shall be in addition to any and all taxes imposed by law and the proceeds of such tax shall be used by the city or county solely for funding a convention and visitors bureau which shall be a general not for profit organization with whom the city or county has contracted, and which is established for the purpose of promoting the city or county as a convention, visitor and tourist

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

center. Such tax shall be stated separately from all other charges and taxes.

[67.1000. The governing body of any county or of any city which is the county seat of any county or which now or hereafter has a population of more than three thousand five hundred inhabitants and which has heretofore been authorized by the general assembly, or of any city which has a population of at least seventeen thousand but not more than forty-five thousand inhabitants located in a county of the first classification with a charter form of government with a population of at least two hundred thousand inhabitants but not more than three hundred thousand inhabitants may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels situated in the city or county, which shall be not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at an election permitted pursuant to section 115.123, RSMo, a proposal to authorize the governing body of the city or county to impose a tax pursuant to the provisions of this section and section 67.1002. The tax authorized by this section and section 67.1002 shall be in addition to the charge for the sleeping room and shall be in addition to any and all taxes imposed by law and the proceeds of such tax shall be used by the city or county solely for funding a convention and visitors bureau which shall be a general not for profit organization with whom the city or county has contracted, and which is established for the purpose of promoting the city or county as a convention, visitor and tourist center. Such tax shall be stated separately from all other charges and taxes.]

67.1300. 1. The governing body of any of the contiguous counties of the third classification without a township form of government enumerated in subdivisions (1) to (5) of this subsection or in any county of the fourth classification acting as a county of the second classification, having a population of at least forty thousand but less than forty-five thousand with a state university, and adjoining a county of the first classification with part of a city with a population of three hundred fifty thousand or more inhabitants or a county of the third classification with more than fifteen townships having a population of at least twenty-one thousand inhabitants or a county of the third classification without a township form of government and with a population of at least seven thousand four hundred but less than eight thousand inhabitants or any county of the third classification with a population greater than three thousand but less than four thousand or any county of the third classification with a population greater than six thousand one hundred but less than six thousand four hundred or any county of the third classification with a population greater than six thousand eight hundred but less than seven thousand or any county of the third classification with a population greater than seven thousand eight hundred but less than seven thousand nine hundred or any county of the third classification with a population greater than eight thousand four hundred sixty but less than eight thousand five hundred or any county of the third classification with a population greater than nine thousand but less than nine thousand two hundred or any county of the third classification with a population greater than ten thousand five hundred but less than ten thousand six hundred or any county of the third classification with a population greater than twenty-three thousand five hundred but less than twenty-three thousand seven hundred or a county of the third classification with a population greater than thirty-three thousand but less than thirty-four thousand or a county of the third classification with a population greater than twenty thousand eight hundred but less than twenty-one thousand or a county of the

third classification with a population greater than fourteen thousand one hundred but less than fourteen thousand five hundred or a county of the third classification with a population greater than twenty thousand eight hundred fifty but less than twenty-two thousand or a county of the third classification with a population greater than thirty-nine thousand but less than forty thousand or a county of the third classification with a township form of organization and a population greater than twenty-eight thousand but less than twenty-nine thousand or a county of the third classification with a population greater than fifteen thousand but less than fifteen thousand five hundred or a county of the third classification with a population greater than eighteen thousand but less than nineteen thousand seventy or a county of the third classification with a population greater than thirteen thousand nine hundred but less than fourteen thousand four hundred or a county of the third classification with a population greater than twenty-seven thousand but less than twenty-seven thousand five hundred or a county of the first classification without a charter form of government and a population of at least eighty thousand but not greater than eighty-three thousand or a county of the third classification with a population greater than fifteen thousand but less than fifteen thousand nine hundred without a township form of government which does not adjoin any county of the first, second or fourth classification or a county of the third classification with a population greater than twenty-three thousand but less than twenty-five thousand without a township form of government which does not adjoin any county of the second or fourth classification and does adjoin a county of the first classification with a population greater than one hundred twenty thousand but less than one hundred fifty thousand **or in any county of the fourth classification acting as a county of the second classification, having a population of at least forty-eight thousand or any county of the third classification without a township form of government with a population greater than two thousand but less than three thousand or any county of the third classification without a township form of government with a population greater than five thousand seven hundred but less than six thousand three hundred or any county of the third classification with a township form of government with a population greater than twenty-one thousand six hundred but less than twenty-two thousand** or any governing body of a municipality located in any of such counties may impose, by ordinance or order, a sales tax on all retail sales made in such county or municipality which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo:

(1) A county with a population of at least four thousand two hundred inhabitants but not more than four thousand five hundred inhabitants;

(2) A county with a population of at least four thousand seven hundred inhabitants but not more than four thousand nine hundred inhabitants;

(3) A county with a population of at least seven thousand three hundred inhabitants but not more than seven thousand six hundred inhabitants;

(4) A county with a population of at least ten thousand one hundred inhabitants but not more than ten thousand three hundred inhabitants; and

(5) A county with a population of at least four thousand three hundred inhabitants but not more than four thousand five hundred inhabitants.

2. The maximum rate for a sales tax pursuant to this section shall be one percent for municipalities and one-half of one percent for counties.

3. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law, except that no ordinance or order imposing a sales tax pursuant to the provisions of this section shall be effective unless the governing body of the county or municipality submits

to the voters of the county or municipality, at a regularly scheduled county, municipal or state general or primary election, a proposal to authorize the governing body of the county or municipality to impose a tax. Any sales tax imposed pursuant to this section shall not be authorized for a period of more than five years.

4. Such proposal shall be submitted in substantially the following form:

Shall the (city, town, village or county) of impose a sales tax of (insert amount) for the purpose of economic development in the (city, town, village or county)?

☐ YES

☐ NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second quarter after the director of revenue receives notice of adoption of the tax. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the county or municipality shall not impose the sales tax authorized in this section until the governing body of the county or municipality resubmits another proposal to authorize the governing body of the county or municipality to impose the sales tax authorized by this section and such proposal is approved by a majority of the qualified voters voting thereon; however no such proposal shall be resubmitted to the voters sooner than twelve months from the date of the submission of the last such proposal.

5. All revenue received by a county or municipality from the tax authorized pursuant to the provisions of this section shall be deposited in a special trust fund and shall be used solely for economic development purposes within such county or municipality for so long as the tax shall remain in effect.

6. Once the tax authorized by this section is abolished or is terminated by any means, all funds remaining in the special trust fund shall be used solely for economic development purposes within the county or municipality. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other county or municipal funds.

7. All sales taxes collected by the director of revenue pursuant to this section on behalf of any county or municipality, less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited in a special trust fund, which is hereby created, to be known as the "Local Economic Development Sales Tax Trust Fund".

8. The moneys in the local economic development sales tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust fund and which was collected in each county or municipality imposing a sales tax pursuant to this section, and the records shall be open to the inspection of officers of the county or municipality and the public.

9. Not later than the tenth day of each month the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the county or municipality which levied the tax. Such funds shall be deposited with the county treasurer of each such county or the appropriate municipal officer in the case of a municipal tax, and all expenditures of funds arising from the local economic development sales tax trust fund shall be by an appropriation act to be enacted by the governing body of each such county or municipality. Expenditures may be made from the fund for any economic development purposes authorized in the ordinance or order

adopted by the governing body submitting the tax to the voters.

10. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county or municipality for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties and municipalities.

11. If any county or municipality abolishes the tax, the county or municipality shall notify the director of revenue of the action at least ninety days prior to the effective date of the repeal and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such county or municipality, the director of revenue shall remit the balance in the account to the county or municipality and close the account of that county or municipality. The director of revenue shall notify each county or municipality of each instance of any amount refunded or any check redeemed from receipts due the county or municipality.

12. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to this section.

13. For purposes of this section, the term "economic development" is limited to the following:

- (1) Operations of economic development or community development offices, including the salaries of employees;
- (2) Provision of training for job creation or retention;
- (3) Provision of infrastructure and sites for industrial development or for public infrastructure projects; and
- (4) Refurbishing of existing structures and property relating to community development.

135.750. 1. Beginning January 1, 1999, a taxpayer shall be granted a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, or chapter 148, RSMo, for up to fifty percent of the amount of investment in production or production-related activities [by a qualified film production company] **in a qualified film production project**. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441, 143.471, RSMo, or section 148.370, RSMo, and the term ["qualified film production company"] **"qualified film production project"** means any film production [company] **project** with an expected in-state expenditure budget in excess of three hundred thousand dollars. **Each film production company shall be limited to one qualified film production project per year.** Activities qualifying a taxpayer for the tax credit pursuant to this subsection shall be approved by the office of the Missouri film commission and the department of economic development.

2. Taxpayers shall apply for the film production tax credit by submitting an application to the department of economic development, on a form provided by the department. As part of the application, the expected in-state expenditures of the qualified film production [company] **project** shall be documented. In addition, the application shall include an economic impact statement, showing the economic impact from the activities of the film production [company] **project**. Such economic impact statement shall indicate the impact on the region of the state in which the film production or production-related activities are located and on the state as a whole.

3. Tax credits certified pursuant to subsection 1 of this section shall not exceed five

hundred thousand dollars per taxpayer **per year**, and shall not exceed a total for all tax credits certified of one million dollars per year. Taxpayers may carry forward unused credits for up to five tax periods, provided all such credits shall be claimed within ten tax periods following the tax period in which the film production or production-related activities for which the credits are certified by the department occurred.

4. Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 1 of this section. The taxpayer acquiring the tax credits may use the acquired credits to offset [up to fifty percent of] the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, or chapter 148, RSMo. Unused acquired credits may be carried forward for up to five tax periods, provided all such credits shall be claimed within ten tax periods following the tax period in which the film production or production-related activities for which the credits are certified by the department occurred.

[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 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 or corporation operating a business for profit and leasing or otherwise occupying space in an incubator.

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

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

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

(3) Demonstrate a potential for sustained use of the incubator program by

eligible tenants and participants, through a market study or other means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Set rental and service fees;

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

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

7. The department:

(1) May adopt such rules, statements of policy, procedures, forms and guidelines as may be necessary for the implementation of this section;

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

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

(4) Shall receive and evaluate annual reports from local sponsors. Such annual reports shall include, but need not be limited to, a financial statement for the incubator, evidence that all tenants and participants in the program are eligible under the terms of this section, and a list of companies in the incubator.

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

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

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

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

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

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

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

(6) The occupancy rate of each incubator;

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

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

11. For any taxable year beginning after December 31, 1989, a taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of chapter 143, RSMo, or chapter 147, RSMo, or chapter 148, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, in the amount of fifty percent of any amount contributed by the taxpayer to the Missouri small business incubators fund during the taxpayer's tax year or any contribution by the taxpayer to a local sponsor after the local sponsor's application has been accepted and approved by the department. The tax credit allowed by this subsection shall be claimed by the

taxpayer at the time he files his return and shall be applied against the income tax liability imposed by chapter 143, RSMo, or chapter 147, RSMo, or chapter 148, RSMo, after all other credits provided by law have been applied. That portion of earned tax credits which exceeds the taxpayer's tax liability may be carried forward for up to five years. The aggregate of all tax credits authorized under this section shall not exceed five hundred thousand dollars in any taxable year.

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

- (1) For no less than seventy-five percent of the par value of such credits; and
- (2) In an amount not to exceed one hundred percent of annual earned credits.

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

620.1039. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441, 143.471, RSMo, or section 148.370, RSMo, and the term "qualified research expenses" has the same meaning as prescribed in 26 U.S.C. 41.

2. Beginning January 1, 1994, a taxpayer may be allowed a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or chapter 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, if approved by the director of the department of economic development, in an amount up to six and one-half percent of the excess of the taxpayer's qualified research expenses, as certified by the director of the department of economic development, within this state during the taxable year over the average of the taxpayer's qualified research expenses within this state over the immediately preceding three taxable years; except that, no tax credit shall be allowed on that portion of the taxpayer's qualified research expenses incurred within this state during the taxable year in which the credit is being claimed, to

the extent such expenses exceed two hundred percent of the taxpayer's average qualified research expenses incurred during the immediately preceding three taxable years. In order to receive a tax credit pursuant to this section, certification by the director of the department of economic development shall be required as proof that the taxpayer made qualified research expenses during the taxable year.

3. The director of economic development shall prescribe the manner in which the tax credit may be claimed. The tax credit allowed by this section may be claimed by the taxpayer to offset the tax liability imposed by chapter 143, RSMo, or chapter 148, RSMo, that becomes due in the tax year during which such qualified research expenses were incurred. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability may [only] **either** be carried forward for the next [five] **fifteen** succeeding taxable years or until the full credit has been claimed, whichever first occurs, **or, after the effective date of this act, any unused credit, or portion thereof, may be claimed and refunded in the same tax year in which the credit exceeds the tax liability at the rate of eighty-five cents per dollar claimed.** The application for claiming tax credits allowed in subsection 2 of this section shall be made in the taxpayer's tax period immediately following the tax period for which the credits are being claimed. No rule or portion of a rule promulgated [under] **pursuant to** the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to June 27, 1997, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the provisions of chapter 536, RSMo. The provisions of this section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, including the ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void.

4. The aggregate of all tax credits authorized pursuant to this section shall not exceed **five million dollars in any taxable year beginning on or after January 1, 2000, but before January 1, 2004, and to the extent that the director of the department of economic development receives requests for approval of tax credits in excess of five million dollars in any taxable year, said credits that are otherwise approved by the director of the department of economic development shall be certified on a proportional basis. The aggregate of all tax credits authorized pursuant to this section shall not exceed ten million dollars in any taxable year beginning on or after January 1, 2004, and to the extent that the director of the department of economic development receives requests for approval of tax credits in excess of ten million dollars in any taxable year, said credits that are otherwise approved by the director of the department of economic development, shall be certified on a proportional basis.**

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the "Missouri New Enterprise Creation Act".

Section 2. As used in sections 1 to 6 of this act, the following terms mean:

(1) "Board", the Missouri seed capital investment board, as established pursuant to section 3 of this act;

(2) "Committed contributions", the total amount of qualified contributions that are committed to a qualifying fund by contractual agreement;

- (3) "Department", the department of economic development;
- (4) "Director", the director of the department of economic development;
- (5) "Follow-up capital", capital provided to a qualified business in which a qualified fund has previously invested seed capital or start-up capital. No more than forty percent of the qualified contributions to a qualified fund may be used for follow-up capital, and no qualified contributions which generate tax credits before the second round of allocations as authorized by section 6 of this act shall be used for follow-up capital investments;
- (6) "Person", any individual, corporation, partnership, limited liability company or other entity;
- (7) "Positive cash flow", total cash receipts from sales or services, but not from investments or loans, exceeding total cash expenditures as calculated on a fiscal year basis;
- (8) "Qualified business", any independently owned and operated business which is headquartered and located in Missouri and which is involved in or intends to be involved in commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce. Such a business shall maintain its headquarters in Missouri for a period of at least three years from the date of receipt of a qualified investment or be subject to penalties pursuant to section 620.017, RSMo;
- (9) "Qualified contribution", cash contributions to a qualified fund pursuant to the terms of contractual agreements made between the qualified fund and a qualified economic development organization authorized by the board to enter into such contracts;
- (10) "Qualified economic development organization", any corporation organized pursuant to the provisions of chapter 355, RSMo, that, as of January 1, 1991, had obtained a contract with the department to operate an innovation center to promote, assist and coordinate the research and development of new services, products or processes in this state;
- (11) "Qualified fund", a fund established by any corporation, partnership, joint venture, unincorporated association, trust or other organization established pursuant to the laws of Missouri and approved by the board;
- (12) "Qualified investment", any investment of seed capital, start-up capital or follow-up capital in a qualified business that does not cause more than ten percent of all the qualified contributions to a qualified fund to be invested in a single qualified business;
- (13) "Seed capital", capital provided to a qualified business for research, development and precommercialization activities to prove a concept for a new product, process or service, and for activities related thereto; provided that, seed capital shall not be provided to any business which in a past fiscal year has experienced a positive cash flow;
- (14) "Start-up capital", capital provided to a qualified business for use in preproduction product development, service development or initial marketing thereof; provided that, start-up capital shall not be provided to any business which has experienced a positive cash flow in a past fiscal year;
- (15) "Uninvested capital", that portion of any qualified contribution to a qualified fund, other than management fees not to exceed three percent per year of committed contributions, qualified investments and other expenses or fees authorized by the board, that is not invested as a qualified investment within ten years of its receipt.

Section 3. There is hereby established the "Missouri Seed Capital Investment

Board", to be composed of thirteen persons. One person shall be the director, or the director's designee, and each qualified economic development organization, not to exceed four, shall respectively be represented by one member appointed by each organization. Eight members shall be appointed by the governor with the advice and consent of the senate. Of these, one shall represent a major public research university located within the state, one shall represent a major private research university located within the state and the remaining six members shall have backgrounds in technology, banking or small business development. The eight members appointed by the governor shall serve terms of three years; except that, of those first appointed, three shall serve for terms of three years, three for terms of two years and two for terms of one year. The members of the board shall annually elect one of its members who has been appointed by the governor as chairman of the board. At any meeting of the board, seven members must be present to constitute a quorum. The department shall provide support services necessary to carry out the duties of the board.

Section 4. 1. The Missouri seed capital and commercialization strategy shall be jointly developed and approved by the boards of directors of all of the qualified economic development organizations and submitted as one plan to the board for its approval. The board shall not approve any qualified fund unless such fund is described in the Missouri seed capital and commercialization strategy. The strategy shall include a proposal for the establishment and operation of between one and four qualified funds in Missouri. The initial strategy shall be submitted to the board no later than July 1, 2000, and shall be approved or rejected by the board within three months of receipt. No tax credits authorized pursuant to the provisions of sections 1 to 6 of this act shall be awarded until such strategy has been approved by the board.

2. As soon as practicable after the board approves the Missouri seed capital and commercialization strategy, the department shall authorize the use of up to forty million dollars in tax credits by the approved qualified funds, in aggregate pursuant to the provisions of section 6 of this act, with not more than ten million dollars of tax credits being issued in any one year.

3. The board shall approve the professional managers employed by the qualified funds according to criteria similar to that used by the U.S. Small Business Administration's Small Business Investment Corporation Program.

4. The department may promulgate any rules and regulations necessary to administer the provisions of sections 1 to 6 of this act. No rule or regulation or portion of a rule or regulation promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Section 5. 1. The board may authorize each qualified economic development organization to enter into contractual agreements with any qualified fund allowing such qualified fund to offer tax credits authorized pursuant to the provisions of sections 1 to 6 of this act to those persons making qualified contributions to the qualified fund. The board shall establish policies and procedures requiring each authorized qualified economic development organization to secure from each qualified fund and its investors the maximum fund equity interest possible, as dictated by market conditions, in exchange for the use of the tax credits. All tax credits authorized pursuant to sections 1 to 6 of this act shall be administered by the department.

2. Each qualified fund shall, pursuant to the strategy approved by the board, enter into a contract with one or more qualified economic development organizations which shall entitle all qualified economic development organizations in existence at that time to receive and share equally all distributions of equity and dividends or other earnings of the fund that are generated as a result of any equity interest secured as a result of actions taken to comply with subsection 1 of section 5 of this act. Such contracts shall require the qualified funds to transfer to the board all distributions of dividends or other earnings of the fund that are owed to any qualified economic development organization that has dissolved or has ceased doing business for a period of one year or more.

3. All distributions of dividends, earnings, equity or the like owed pursuant to the provisions of sections 1 to 6 of this act to a qualified economic development organization by any qualified fund shall be paid to the qualified economic development organization. The qualified economic development organization shall use such payments solely for reinvestment in qualified funds in order to provide ongoing seed capital, start-up capital and follow-up capital for Missouri businesses. No qualified economic development organization may transfer any dividends, earnings, equity or the like owed it pursuant to sections 1 to 6 of this act to any other person or entity without the approval of the board.

Section 6. 1. The sole purpose of each qualified fund is to make investments. One hundred percent of investments made from qualified contributions shall be qualified investments.

2. Any person who makes a qualified contribution to a qualified fund shall receive a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, chapter 147, RSMo, or chapter 148, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in an amount equal to one hundred percent of such person's qualified contribution.

3. Such person shall submit to the department an application for the tax credit on a form provided by the department. The department shall award tax credits in the order the applications are received and based upon the strategy approved by the board. Tax credits issued pursuant to this section may be claimed for the tax year in which the qualified contribution is made or in any of the following ten years, and may be assigned, transferred or sold.

4. There is hereby imposed on each qualified fund a tax equal to fifteen percent of the qualified fund's uninvested capital at the close of such qualified fund's tax year. For purposes of tax computation, any distribution made by a qualified fund during a tax year is deemed made at the end of such tax year. Each tax year, every qualified fund shall remit the tax imposed by this section to the director of the department of revenue for deposit in the state treasury to the credit of the general revenue fund.

Section 7. The sale of the master and the first copy of a customized motion picture or video production by the producer of the motion picture or video production shall be considered the sale of a service and not the sale of tangible personal property. Purchases of tangible personal property which are for use in producing the master or first copy of a customized motion picture or video production shall be deemed to be purchases for use or consumption and not for resale. Sales of subsequent copies of the customized motion picture or video production described in this section shall be considered sales of tangible personal property. In addition to the exemptions granted pursuant to the provisions of

section 144.030, RSMo, the sale of services as defined in this section shall be specifically exempted from the provisions of sections 144.010 to 144.510, RSMo, and sections 144.600 to 144.745, RSMo, and the local sales tax law, as defined in section 32.085, RSMo, and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.510, RSMo, and sections 144.600 to 144.745, RSMo, and the local sales tax law, as defined in section 32.085, RSMo.

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