

FIRST REGULAR SESSION

HOUSE BILL NO. 135

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FALLERT (Sponsor), HODGES AND KOMO (Co-sponsors).

0171L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 33.282, 135.800, and 620.495, RSMo, and to enact in lieu thereof three new sections relating to the small business incubators act.

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

Section A. Sections 33.282, 135.800, and 620.495, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 33.282, 135.450, and 135.800, to read as follows:

33.282. 1. Subject to appropriation the office of administration shall develop a tax expenditure budget for submission to the general assembly in conjunction with the submission of the state budget as required in section 33.280. The tax expenditure budget shall indicate, on an annual basis, the reduction in revenue collections for each fiscal year as a result of each deduction, exemption, credit or other tax preference as may be authorized by law, and shall indicate, where appropriate, the tax source of each state-funded program. Periodically the tax expenditure budget shall include a cost-benefit analysis of the following:

- (1) The neighborhood assistance program, sections 32.100 to 32.125, RSMo;
- (2) Tax increment financing, sections 99.800 to 99.865, RSMo;
- (3) Export and infrastructure funding, sections 100.250 to 100.297, RSMo;
- (4) Credit for new expanded business facility, sections 135.100 to 135.150, RSMo;
- (5) Enterprise zones, sections 135.200 to 135.256, RSMo;
- (6) Main street program, sections 251.470 to 251.485, RSMo;
- (7) Economic development districts, sections 251.500 to 251.510, RSMo;
- (8) Rural economic development, sections 620.155 to 620.165, RSMo;
- (9) Export development, sections 620.170 to 620.174, RSMo; **and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (10) [Small business incubator program, section 620.495, RSMo; and
18 (11)] Other programs as may be practical. Pursuant to the provisions of section 32.057,
19 RSMo, the department of revenue shall not release information as part of the tax expenditure
20 budget in a manner that would allow the identification of any individual taxpayer.

21 2. On or before October first of each year each state department authorized by law to
22 offer deductions, exemptions, credits or other tax preferences shall submit to the budget director
23 the estimated amount of such tax expenditures for the fiscal year beginning July first of the
24 following year and a cost/benefit analysis of such tax expenditures for the preceding fiscal year.
25 Such estimates and analysis shall be in the manner and form prescribed by the budget director
26 and shall be submitted by the budget director to the chairman of the senate appropriations
27 committee and the chairman of the house budget committee by January first of each year.

28 3. No new tax credits, except the senior citizens property tax credit as referenced in
29 chapter 135, RSMo, shall be issued or certified for any tax year beginning after July first of the
30 following year unless the estimate of such credits have been reviewed and approved by a
31 majority of the senate appropriations committee and the house budget committee.

135.450. 1. As used in this section, the following words and terms mean:

2 (1) "Economic development", the acquisition, renovation, improvement, or the
3 furnishing or equipping of existing buildings and real estate when such acquisition,
4 renovation, improvement, or the furnishing or equipping of such buildings and real estate
5 will result in the creation or retention of jobs within the state;

6 (2) "Education", includes programs which encourage Missouri residents who are
7 high school dropouts to either reenter and graduate from high school or earn a graduate
8 equivalency degree, and scholarship assistance in the areas of math and science to residents
9 of the state of Missouri attending schools located in the state;

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

15 (4) "Local sponsor" or "sponsor", an organization which enters into a written
16 agreement with the department of economic development to establish, operate, and
17 administer a small business incubator program or to provide funding to an organization
18 which operates such a program;

19 (5) "Participant", a sole proprietorship, business partnership or corporation
20 operating a business for profit through which the owner avails himself or herself of
21 business development services in an incubator program;

22 (6) "Rural community", any community where such community is a city, town, or
23 village which has fifteen thousand or fewer inhabitants as of the last decennial census and
24 is located in a county which is either located in:

25 (a) An area that is not part of a standard metropolitan statistical area; or

26 (b) A standard metropolitan statistical area but such county has only one city,
27 town, or village which has more than fifteen thousand inhabitants;

28 (7) "School", any public elementary or high school, as those terms are defined in
29 section 160.011, RSMo, located within the state of Missouri, and any institution of
30 postsecondary education, including universities, colleges, vocational and technical schools,
31 located within the state of Missouri;

32 (8) "Taxpayer", corporations, as defined in section 143.441, RSMo, individuals,
33 sole proprietorships, partnerships, and S corporations;

34 (9) "Tenant", a sole proprietorship, business partnership, or corporation operating
35 a business for profit and leasing or otherwise occupying space in an incubator.

36 2. This section shall be known as the "Small Business Incubators Act".

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

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

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

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

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

52 (5) Include such other information as the department of economic development
53 may require through its guidelines.

54 4. The department of economic development shall review and accept applications
55 based on the following criteria:

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

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

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

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

62 **5. At least thirty percent of moneys received under subsection 11 of this section**
63 **shall be set aside for a local sponsor to establish, operate, or administer a small business**
64 **incubator program or to provide funding to an organization which operates such a**
65 **program within a rural community.**

66 **6. Loans, loan guarantees, and grants shall be administered in the following**
67 **manner:**

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

74 (2) **Loans, loan guarantees, and grants shall not exceed fifty percent of total eligible**
75 **project costs;**

76 (3) **Payment of interest and principal on loans may be deferred at the discretion of**
77 **the department of economic development.**

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

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

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

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

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

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

90 (6) **Set rental and service fees;**

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

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

98 **8. The department of economic development:**

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

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

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

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

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

111 **10. On or before January first of each year, the department of economic**
112 **development shall provide a report to the governor, the chief clerk of the house of**
113 **representatives, and the secretary of the senate which shall include, but need not be limited**
114 **to:**

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

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

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

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

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

122 **(6) The occupancy rate of each incubator;**

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

125 **11. There is hereby established in the state treasury a special fund to be known as**
126 **the "Missouri Small Business Incubators Fund", which shall consist of all moneys which**
127 **may be appropriated to it by the general assembly, and also any gifts, contributions,**
128 **grants, or bequests received from federal, private, or other sources. Moneys for loans, loan**
129 **guarantees, and grants under the small business incubator program may be obtained from**

130 **appropriations made by the general assembly from the Missouri small business incubators**
131 **fund. Any moneys remaining in the Missouri small business incubators fund at the end of**
132 **any fiscal year shall not lapse to the general revenue fund, as provided in section 33.080,**
133 **RSMo, but shall remain in the Missouri small business incubators fund.**

134 **12. A taxpayer shall be entitled to a tax credit under this section in an amount equal**
135 **to fifty percent of any amount contributed by the taxpayer to the Missouri small business**
136 **incubators fund during the taxpayer's tax year or any contribution by the taxpayer to a**
137 **local sponsor after the local sponsor's application has been accepted and approved by the**
138 **department of economic development.**

135.800. 1. The provisions of sections 135.800 to 135.830 shall be known and may be
2 cited as the "Tax Credit Accountability Act of 2004".

3 2. As used in sections 135.800 to 135.830, the following terms mean:

4 (1) "Administering agency", the state agency or department charged with administering
5 a particular tax credit program, as set forth by the program's enacting statute; where no
6 department or agency is set forth, the department of revenue;

7 (2) "Agricultural tax credits", the agricultural product utilization contributor tax credit
8 created pursuant to section 348.430, RSMo, the new generation cooperative incentive tax credit
9 created pursuant to section 348.432, RSMo, the family farm breeding livestock loan tax credit
10 created under section 348.505, RSMo, the qualified beef tax credit created under section
11 135.679, and the wine and grape production tax credit created pursuant to section 135.700;

12 (3) "All tax credit programs", the tax credit programs included in the definitions of
13 agricultural tax credits, business recruitment tax credits, community development tax credits,
14 domestic and social tax credits, entrepreneurial tax credits, environmental tax credits, housing
15 tax credits, redevelopment tax credits, and training and educational tax credits;

16 (4) "Business recruitment tax credits", the business facility tax credit created pursuant
17 to sections 135.110 to 135.150 and section 135.258, the enterprise zone tax benefits created
18 pursuant to sections 135.200 to 135.270, the business use incentives for large-scale development
19 programs created pursuant to sections 100.700 to 100.850, RSMo, the development tax credits
20 created pursuant to sections 32.100 to 32.125, RSMo, the rebuilding communities tax credit
21 created pursuant to section 135.535, and the film production tax credit created pursuant to
22 section 135.750;

23 (5) "Community development tax credits", the neighborhood assistance tax credit created
24 pursuant to sections 32.100 to 32.125, RSMo, the family development account tax credit created
25 pursuant to sections 208.750 to 208.775, RSMo, the dry fire hydrant tax credit created pursuant
26 to section 320.093, RSMo, and the transportation development tax credit created pursuant to
27 section 135.545;

28 (6) "Domestic and social tax credits", the youth opportunities tax credit created pursuant
29 to section 135.460 and sections 620.1100 to 620.1103, RSMo, the shelter for victims of domestic
30 violence created pursuant to section 135.550, the senior citizen or disabled person property tax
31 credit created pursuant to sections 135.010 to 135.035, the special needs adoption tax credit
32 created pursuant to sections 135.325 to 135.339, the maternity home tax credit created pursuant
33 to section 135.600, and the shared care tax credit created pursuant to section 660.055, RSMo;

34 (7) "Entrepreneurial tax credits", the capital tax credit created pursuant to sections
35 135.400 to 135.429, the certified capital company tax credit created pursuant to sections 135.500
36 to 135.529, the seed capital tax credit created pursuant to sections 348.300 to 348.318, RSMo,
37 the new enterprise creation tax credit created pursuant to sections 620.635 to 620.653, RSMo,
38 the research tax credit created pursuant to section 620.1039, RSMo, [the small business incubator
39 tax credit created pursuant to section 620.495, RSMo,] the guarantee fee tax credit created
40 pursuant to section 135.766, and the new generation cooperative tax credit created pursuant to
41 sections 32.105 to 32.125, RSMo;

42 (8) "Environmental tax credits", the charcoal producer tax credit created pursuant to
43 section 135.313, the wood energy tax credit created pursuant to sections 135.300 to 135.311;

44 (9) "Housing tax credits", the neighborhood preservation tax credit created pursuant to
45 sections 135.475 to 135.487, the low-income housing tax credit created pursuant to sections
46 135.350 to 135.363, and the affordable housing tax credit created pursuant to sections 32.105 to
47 32.125, RSMo;

48 (10) "Recipient", the individual or entity who is the original applicant for and who
49 receives proceeds from a tax credit program directly from the administering agency, the person
50 or entity responsible for the reporting requirements established in section 135.805;

51 (11) "Redevelopment tax credits", the historic preservation tax credit created pursuant
52 to sections 253.545 to 253.561, RSMo, the brownfield redevelopment program tax credit created
53 pursuant to sections 447.700 to 447.718, RSMo, the community development corporations tax
54 credit created pursuant to sections 135.400 to 135.430, the infrastructure tax credit created
55 pursuant to subsection 6 of section 100.286, RSMo, the bond guarantee tax credit created
56 pursuant to section 100.297, RSMo, and the disabled access tax credit created pursuant to section
57 135.490;

58 (12) "Training and educational tax credits", the community college new jobs tax credit
59 created pursuant to sections 178.892 to 178.896, RSMo.

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

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

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

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

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

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

18 (5) "Tenant", a sole proprietorship, business partnership or corporation
19 operating a business for profit and leasing or otherwise occupying space in an
20 incubator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73 (6) Set rental and service fees;

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

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

81 7. The department:

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

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

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

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

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

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

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

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

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

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

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

107 (6) The occupancy rate of each incubator;

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

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

120 11. For any taxable year beginning after December 31, 1989, a taxpayer,
121 including any charitable organization which is exempt from federal income tax
122 and whose Missouri unrelated business taxable income, if any, would be subject
123 to the state income tax imposed under chapter 143, RSMo, shall be entitled to a
124 tax credit against any tax otherwise due under the provisions of chapter 143,
125 RSMo, or chapter 147, RSMo, or chapter 148, RSMo, excluding withholding tax
126 imposed by sections 143.191 to 143.265, RSMo, in the amount of fifty percent
127 of any amount contributed by the taxpayer to the Missouri small business
128 incubators fund during the taxpayer's tax year or any contribution by the taxpayer
129 to a local sponsor after the local sponsor's application has been accepted and
130 approved by the department. The tax credit allowed by this subsection shall be
131 claimed by the taxpayer at the time he files his return and shall be applied against
132 the income tax liability imposed by chapter 143, RSMo, or chapter 147, RSMo,
133 or chapter 148, RSMo, after all other credits provided by law have been applied.
134 That portion of earned tax credits which exceeds the taxpayer's tax liability may

135 be carried forward for up to five years. The aggregate of all tax credits
136 authorized under this section shall not exceed five hundred thousand dollars in
137 any taxable year.

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

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

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

148
149 The taxpayer acquiring earned credits, hereinafter the assignee for the purpose of
150 this subsection, may use the acquired credits to offset up to one hundred percent
151 of the tax liabilities otherwise imposed by chapter 143, RSMo, or chapter 147,
152 RSMo, or chapter 148, RSMo, excluding withholding tax imposed by sections
153 143.191 to 143.265, RSMo. Unused credits in the hands of the assignee may be
154 carried forward for up to five years. The assignor shall enter into a written
155 agreement with the assignee establishing the terms and conditions of the
156 agreement and shall perfect such transfer by notifying the department of
157 economic development in writing within thirty calendar days following the
158 effective day of the transfer and shall provide any information as may be required
159 by the department of economic development to administer and carry out the
160 provisions of this section. The director of the department of economic
161 development shall prescribe the method for submitting applications for claiming
162 the tax credit allowed under subsection 11 of this section and shall, if the
163 application is approved, certify to the director of revenue that the taxpayer
164 claiming the credit has satisfied all the requirements specified in this section and
165 is eligible to claim the credit.]

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