

FIRST REGULAR SESSION

HOUSE BILL NO. 779

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HUMMEL (Sponsor), CARTER, KRATKY,
COLONA AND CARLSON (Co-sponsors).

1942L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 447.708, RSMo, and to enact in lieu thereof one new section relating to remediation tax credits.

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

Section A. Section 447.708, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 447.708, to read as follows:

447.708. 1. For eligible projects, 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 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 and sections 135.200 to 135.257. The tax credits allowed pursuant to this subsection shall be used to offset the tax imposed by chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265, or the tax otherwise imposed by chapter 147, or the tax otherwise imposed by chapter 148. For purposes of this subsection:

(1) For receipt of the ad valorem tax abatement pursuant to section 135.215, 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 of at least fifty percent for a period not less than ten years and not more than twenty-five years;

(2) For receipt of the income tax exemption pursuant to section 135.220 and tax credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and 135.225,

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 the eligible project must create at least ten new jobs or retain businesses which supply at least
18 twenty-five existing jobs, or combination thereof. For purposes of sections 447.700 to 447.718,
19 the tax credits described in section 135.225 are modified as follows: the tax credit shall be four
20 hundred dollars per employee per year, an additional four hundred dollars per year for each
21 employee exceeding the minimum employment thresholds of ten and twenty-five jobs for new
22 and existing businesses, respectively, an additional four hundred dollars per year for each person
23 who is a person difficult to employ as defined by section 135.240, and investment tax credits at
24 the same amounts and levels as provided in subdivision (4) of subsection 1 of section 135.225;

25 (3) For eligibility to receive the income tax refund pursuant to section 135.245, the
26 eligible project must create at least ten new jobs or retain businesses which supply at least
27 twenty-five existing jobs, or combination thereof, and otherwise comply with the provisions of
28 section 135.245 for application and use of the refund and the eligibility requirements of this
29 section;

30 (4) The eligible project operates in compliance with applicable environmental laws and
31 regulations, including permitting and registration requirements, of this state as well as the federal
32 and local requirements;

33 (5) The eligible project operator shall file such reports as may be required by the director
34 of economic development or the director's designee;

35 (6) The taxpayer may claim the state tax credits authorized by this subsection and the
36 state income exemption for a period not in excess of ten consecutive tax years. For the purpose
37 of this section, "taxpayer" means an individual proprietorship, partnership or corporation
38 described in section 143.441 or 143.471 who operates an eligible project. The director shall
39 determine the number of years the taxpayer may claim the state tax credits and the state income
40 exemption based on the projected net state economic benefits attributed to the eligible project;

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

51 (8) For the purpose of meeting the existing job retention requirement, if the eligible
52 project replaces a similar facility that closed elsewhere in Missouri prior to the end of the

53 taxpayer's tax period in which the tax credits are earned, it shall be required that at least
54 twenty-five existing jobs be retained at, and in connection with the eligible project, on a full-time
55 basis during the taxpayer's tax period for which the credits are earned. "Retained job" means a
56 person who was previously employed by the taxpayer or related taxpayer, at a facility similar to
57 the eligible project that closed elsewhere in Missouri prior to the end of the taxpayer's tax period
58 in which the tax credits are earned, within the tax period immediately preceding the time the
59 person was employed by the taxpayer to work at, or in connection with, the eligible project on
60 a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five
61 hours per week during the taxpayer's tax period for which the tax credits are earned;

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

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

87 (11) For the purpose of this section, "new qualified investment" means new business
88 facility investment as defined and as determined in subdivision (7) of section 135.100 which is

89 used at and in connection with the eligible project. "New qualified investment" shall not include
90 small tools, supplies and inventory. "Small tools" means tools that are portable and can be hand
91 held.

92 2. The determination of the director of economic development pursuant to subsection
93 1 of this section shall not affect requirements for the prospective purchaser to obtain the approval
94 of the granting of real property tax abatement by the municipal or county government where the
95 eligible project is located.

96 3. (1) The director of the department of economic development, with the approval of
97 the director of the department of natural resources, may, in addition to the tax credits allowed
98 in subsection 1 of this section, grant a remediation tax credit to the applicant for up to one
99 hundred percent of the costs of materials, supplies, equipment, labor, professional engineering,
100 consulting and architectural fees, permitting fees and expenses, demolition, asbestos abatement,
101 **environmental insurance premiums, backfill of areas where contaminated soil excavation**
102 **occurs**, and direct utility charges for performing the voluntary remediation activities for the
103 preexisting hazardous substance contamination and releases, including, but not limited to, the
104 costs of performing operation and maintenance of the remediation equipment at the property
105 beyond the year in which the systems and equipment are built and installed at the eligible project
106 and the costs of performing the voluntary remediation activities over a period not in excess of
107 four tax years following the taxpayer's tax year in which the system and equipment were first put
108 into use at the eligible project, provided the remediation activities are the subject of a plan
109 submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to
110 260.575. The tax credit may also include up to one hundred percent of the costs of demolition
111 that are not directly part of the remediation activities, provided that the demolition is on the
112 property where the voluntary remediation activities are occurring, the demolition is necessary
113 to accomplish the planned use of the facility where the remediation activities are occurring, and
114 the demolition is part of a redevelopment plan approved by the municipal or county government
115 and the department of economic development. The demolition may occur on an adjacent
116 property if the project is located in a municipality which has a population less than twenty
117 thousand and the above conditions are otherwise met. The adjacent property shall independently
118 qualify as abandoned or underutilized. The amount of the credit available for demolition not
119 associated with remediation cannot exceed the total amount of credits approved for remediation
120 including demolition required for remediation.

121 (2) The amount of remediation tax credits issued shall be limited to the least amount
122 necessary to cause the project to occur, as determined by the director of the department of
123 economic development.

124 (3) The director may, with the approval of the director of natural resources, extend the
125 tax credits allowed for performing voluntary remediation maintenance activities, in increments
126 of three-year periods, not to exceed five consecutive three-year periods. The tax credits allowed
127 in this subsection shall be used to offset the tax imposed by chapter 143, excluding withholding
128 tax imposed by sections 143.191 to 143.265, or the tax otherwise imposed by chapter 147, or the
129 tax otherwise imposed by chapter 148.

130 The remediation tax credit may be taken in the same tax year in which the tax credits are
131 received or may be taken over a period not to exceed twenty years.

132 (4) The project facility shall be projected to create at least ten new jobs or at least
133 twenty-five retained jobs, or a combination thereof, as determined by the department of
134 economic development, to be eligible for tax credits pursuant to this section.

135 (5) No more than seventy-five percent of earned remediation tax credits may be issued
136 when the remediation costs were paid, and the remaining percentage may be issued when the
137 department of natural resources issues a letter of completion letter or covenant not to sue
138 following completion of the voluntary remediation activities. It shall not include any costs
139 associated with ongoing operational environmental compliance of the facility or remediation
140 costs arising out of spills, leaks, or other releases arising out of the ongoing business operations
141 of the facility. In the event the department of natural resources issues a letter of completion for
142 a portion of a property, an impacted media such as soil or groundwater, or for a site or a portion
143 of a site improvement, a prorated amount of the remaining percentage may be released based on
144 the percentage of the total site receiving a letter of completion.

145 4. In the exercise of the sound discretion of the director of the department of economic
146 development or the director's designee, the tax credits and exemptions described in this section
147 may be terminated, suspended or revoked, if the eligible project fails to continue to meet the
148 conditions set forth in this section. In making such a determination, the director shall consider
149 the severity of the condition violation, actions taken to correct the violation, the frequency of any
150 condition violations and whether the actions exhibit a pattern of conduct by the eligible facility
151 owner and operator. The director shall also consider changes in general economic conditions and
152 the recommendation of the director of the department of natural resources, or his or her designee,
153 concerning the severity, scope, nature, frequency and extent of any violations of the
154 environmental compliance conditions. The taxpayer or person claiming the tax credits or
155 exemptions may appeal the decision regarding termination, suspension or revocation of any tax
156 credit or exemption in accordance with the procedures outlined in subsections 4 [to 6] **and 5** of
157 section 135.250. The director of the department of economic development shall notify the
158 directors of the departments of natural resources and revenue of the termination, suspension or

159 revocation of any tax credits as determined in this section or pursuant to the provisions of section
160 447.716.

161 5. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax
162 credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection
163 1 of this section and the tax credits otherwise allowed in section 135.110, or the tax credits,
164 exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and 135.245,
165 respectively, for the same facility for the same tax period.

166 6. The total amount of the tax credits allowed in subsection 1 of this section may not
167 exceed the greater of:

168 (1) That portion of the taxpayer's income attributed to the eligible project; or

169 (2) One hundred percent of the total business' income tax if the eligible facility does not
170 replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax
171 period in which the tax credits are earned, and further provided the taxpayer does not operate any
172 other facilities besides the eligible project in Missouri; fifty percent of the total business' income
173 tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the
174 end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer
175 does not operate any other facilities besides the eligible project in Missouri; or twenty-five
176 percent of the total business income if the taxpayer operates, in addition to the eligible facility,
177 any other facilities in Missouri. In no case shall a taxpayer operating more than one eligible
178 project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business
179 income in any tax period. That portion of the taxpayer's income attributed to the eligible project
180 as referenced in subdivision (1) of this subsection, for which the credits allowed in sections
181 135.110 and 135.225 and subsection 3 of this section, may apply, shall be determined in the same
182 manner as prescribed in subdivision (6) of section 135.100. That portion of the taxpayer's
183 franchise tax attributed to the eligible project for which the remediation tax credit may offset,
184 shall be determined in the same manner as prescribed in paragraph (a) of subdivision (6) of
185 section 135.100.

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

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

199 9. The recipient of remediation tax credits, for the purpose of this subsection referred to
200 as assignor, may assign, sell or transfer, in whole or in part, the remediation tax credit allowed
201 in subsection 3 of this section to any other person, for the purpose of this subsection referred to
202 as assignee. To perfect the transfer, the assignor shall provide written notice to the director of
203 the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective,
204 the assignee's name, address and the assignee's tax period and the amount of tax credits to be
205 transferred. The number of tax periods during which the assignee may subsequently claim the
206 tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor
207 previously claimed the credits before the transfer occurred.

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

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

221 (1) The shareholders of the corporation described in section 143.471;

222 (2) The partners of the partnership. The credit provided in this subsection shall be
223 apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion
224 to their share of ownership on the last day of the taxpayer's tax period.