

HCS SB 377 -- BUSINESS INCENTIVES

SPONSOR: Rupp (Flook)

COMMITTEE ACTION: Voted "do pass" by the Committee on Job Creation and Economic Development by a vote of 9 to 0.

This substitute changes the laws regarding business incentives.

MUNICIPAL TECHNOLOGY BUSINESS FACILITY PROJECTS (Section 67.2050, RSMo)

The substitute allows municipalities to engage in projects involving a technology business facility which is a facility located in an underground mine with at least two million square feet of space used for data processing, hosting, Internet publishing and broadcasting, or web search portals. The governing body of any county, city, incorporated town, or village is authorized to:

- (1) Carry out technology business facility projects for economic development;
- (2) Accept grants from the federal and state governments for the project's purposes and enter into agreements which may be required by the grantor if the agreements are not contrary to Missouri laws;
- (3) Receive any gifts and donations from private sources to be used for the project's purposes; and
- (4) Enter into loan agreements, sell, lease, or mortgage to individuals, partnerships, or corporations any component of a technology business facility.

Transactions involving the lease or rental of any project component are exempt from local sales taxes. Leasehold interests will not be subject to property taxes.

If an individual or corporation transfers property for a project free of charge to the governing body of any municipality, it will retain the right to have the governing body transfer the donated property back at no cost.

TAX INCREMENT FINANCING (Section 99.865)

The substitute:

- (1) Requires the Director of the Department of Economic Development to submit its annual tax increment financing (TIF)

report to the State Auditor;

(2) Requires the State Auditor to post information provided in a municipality's annual report to his or her web site in a searchable database available to the public; and

(3) Prohibits a municipality which fails to comply with state TIF reporting requirements from implementing any new TIF project for at least five years.

DOWNTOWN REVITALIZATION PRESERVATION PROGRAM (MODESA-LITE)
(Sections 99.1082 and 99.1090)

The substitute:

(1) Defines "other net new revenues" as it relates to the Downtown Revitalization Preservation Program, commonly referred to as MODESA-Lite, as the amount of state sales tax increment or state income tax increment, or the sum of both, as determined under Section 99.918;

(2) Defines "state income tax increment" as an estimate of the income tax due the state for salaries and wages paid to new employees in new jobs in the redevelopment project area and created by the project. The estimate will be a percentage of gross payroll based upon an analysis done by the Department of Revenue and cannot exceed 2%; and

(3) Allows contributions to a downtown revitalization preservation development project from any private not-for-profit organization or local contributions from tax abatement or other sources to be substituted on a dollar-for-dollar basis for the local match of 100% of payments in lieu of taxes and economic activity taxes from the development's fund.

MISSOURI DEVELOPMENT FINANCE BOARD (Sections 100.286 and 100.297)

Currently, taxpayers who contribute to the Missouri Development Finance Board's Development and Reserve Fund receive a tax credit equal to 50% of the contribution. The board cannot issue more than \$10 million in tax credits in any calendar year or 5% of the average growth in the general revenue receipts in the preceding three fiscal years, whichever is less. This limitation may be exceeded if agreed to by the Commissioner of the Office of Administration and the directors of the departments of Economic Development and Revenue.

The substitute specifies that the total amount of tax credits which the board may authorize or approve cannot exceed \$10 million in Fiscal Year 2010. This limitation can be exceeded if

agreed upon by the Commissioner of the Office of Administration, the directors of the departments of Economic Development and Revenue, and the chairmen of the House Budget Committee and the Senate Appropriations Committee, in which case no more than \$25 million in tax credits can be authorized or approved. Tax credits will be awarded on a first-to-file, first-to-receive basis. No tax credits can be authorized or approved after June 30, 2013.

Currently, the board may authorize a tax credit to owners of revenue bonds for infrastructure facilities. The aggregate principal amount of revenue bonds outstanding at any time related to the tax credit cannot exceed \$50 million. The substitute reduces this amount to \$10 million for Fiscal Year 2010 and thereafter. None of these tax credits may be issued after June 30, 2011.

BUSINESS USE INCENTIVES FOR LARGE-SCALE DEVELOPMENT (Sections 100.710, 100.720, 100.750, and 100.770)

Currently, an eligible industry with an economic development project that is an office industry must create a minimum of 500 new jobs for the purposes of the Business Use Incentives for Large-Scale Development (BUILD) Program. The substitute reduces the minimum number of new jobs to 350.

The substitute also authorizes the Missouri Development Finance Board within the Department of Economic Development to allow the program to temporarily suspend or waive its requirements if market or economic conditions are such that an eligible industry is unable to meet the program's requirements.

Currently, in order to approve an application, the board must find that there is at least one other state that the applicant verifies is being considered for the BUILD project and that there is a significant disparity in the project's costs based on the incentives offered by the competing state. The substitute removes these requirements.

TRANSPORTATION DEVELOPMENT DISTRICTS (Sections 105.145, 238.207, 238.212, and 238.235)

The substitute:

- (1) Requires the boards of directors of transportation development districts to submit an annual report of financial transactions to the State Auditor as required under Section 105.145. Failure to submit a timely copy of the annual financial statement will result in a fine of up to \$500 per day;

(2) Requires petitions to create transportation development districts to include details of the budgeted expenditures, including estimated expenditures for real physical improvements, estimated land acquisition expenses, estimated expenses for professional services, and estimated interest charges;

(3) Requires the circuit court to order a public hearing on the creation and funding of a proposed transportation development district if the petition to create the district was filed by the owners of all real property within the proposed district; and

(4) Requires the Director of the Department of Revenue to perform all functions regarding the administration, collection, enforcement, and operation of transportation development district sales taxes.

HISTORIC STRUCTURES REHABILITATION TAX CREDIT (Sections 253.550 and 253.559)

The substitute:

(1) Specifies that no more than \$165 million in tax credits can be authorized by the Department of Economic Development for the Historic Structures Rehabilitation Tax Credit Program beginning July 1, 2010. For Fiscal Year 2011 and thereafter, this cap will be increased by the percentage equal to the increase in the federal Consumer Price Index for All Urban Consumers. Tax credits authorized for applicants requesting less than \$350,000 in tax credits will not count towards the cap. Currently, this program has no cap;

(2) Requires that an application be submitted to the department before tax credits are authorized. The substitute specifies the requirements of the application;

(3) Requires all applications to be prioritized for review by the department based on the date the application was postmarked. Applications with the same postmark will go through a lottery process to determine the order in which they will be reviewed;

(4) Requires the department to authorize tax credits in an amount equal to 120% of the estimated eligible costs for all approved applications;

(5) Specifies that, if the department allocates all of its tax credits, applications awaiting review will be kept on file and reviewed in order of receipt when the department receives its next allocation of tax credits;

(6) Requires all projects that receive tax credit authorization

to begin rehabilitation within two years of the date noted on the letter received by the applicant notifying them of their approved status. Commencement of rehabilitation will be the date on which physical work has begun and the applicant has incurred at least 10% of the estimated total costs of the rehabilitation; and

(7) Requires an applicant with tax credit authorization to seek final approval prior to claiming the tax credits. The substitute specifies the requirements of final approval.

TAX CREDITS FOR TECHNOLOGY-BASED EARLY STAGE MISSOURI COMPANIES (ANGEL INVESTMENTS) (Sections 348.273 and 348.274)

The Department of Economic Development is authorized to allocate up to \$5 million in tax credits per year to encourage equity investment in technology-based early stage Missouri companies, commonly known as angel investments. Investors who contribute the first \$500,000 in equity investment to a qualified Missouri business may be issued a tax credit equal to 30% of the investment or 40% if the qualified business is in a rural area or distressed community. An investor can receive a credit of up to \$50,000 for an investment in a single, qualified business or up to \$100,000 for investments in more than one qualified business per year. Credits can be carried forward for up to three years or transferred.

QUALIFIED RESEARCH EXPENSES (RESEARCH AND DEVELOPMENT) TAX CREDIT (Section 620.1039)

Currently, no tax credits for qualified research expenses can be approved, awarded, or issued. The substitute removes these restrictions and allows a tax credit equal to no more than 6.5% of a taxpayer's qualified research expenses. The annual aggregate cap on the amount of these tax credits that can be authorized by the Department of Economic Development is \$10 million.

Qualified research expenses will be limited to those incurred in the research and development of agricultural biotechnology, plant genomics products, diagnostic and therapeutic medical devices, prescription pharmaceuticals consumed by humans or animals, and electronic patient health record technology. Expenses incurred in the research, development, or manufacturing of power system technology for aerospace; space; defense; implantable or wearable medical devices; or gears, speed changers, and industrial high-speed drivers utilized in the wind turbine industry are also permitted.

The department director may allow a taxpayer to transfer up to 40% of the tax credits issued, but not yet claimed, between

January 1, 2010, and December 31, 2016. The substitute requires the department director to act between August 1 and August 15 on tax credit applications filed between January 1 and July 1 for claims from the previous year.

The formula is specified by which tax credits will be issued if the eligible claims for the credits exceed the annual cap. No one taxpayer can be issued more than 30% of the total amount of tax credits authorized in any calendar year.

QUALITY JOBS ACT (Sections 620.1878 and 620.1881)

The substitute:

(1) Establishes an energy efficiency technology project as a new project type within the Quality Jobs Act. Within two years from the date of approval, a qualified company must create at least 50 new jobs that are engaged in the development of new energy efficiency technologies including those supporting clean or sustainable energy or energy conservation or it must manufacture energy efficient products or components. A qualified company with an energy efficiency technology project may retain 4% of the withholding tax from its new payroll for five years if the average wage of the new payroll equals or exceeds the county average wage. Five percent can be retained if local incentives equal between 10% and 24% of the new direct local revenue; 6% if local incentives equal between 25% and 49%; or 7% if local incentives equal 50% or more of the new direct local revenue. If the qualified company creates at least 100 new jobs, it may retain this amount for six years or for seven years if it creates at least 500 new jobs. If the withholding tax is not sufficient to provide the entire benefit due the qualified company, the department will issue a refundable tax credit for the difference. If the qualified company demonstrates to the Department of Economic Development that another company expands or commences operations in Missouri or moves to Missouri from another state as a result of its relationship to the qualified company, the qualified company may be eligible for a jobs benefit. The other company must be either a direct supplier or direct purchaser of the qualifying company and must create at least 10 new jobs within a two-year period. The jobs benefit is a tax credit issued to the qualified company for three years and will be equal to 50% of the withholding for the supplier/purchaser company's new jobs if the average wage for these new jobs equals or exceeds the county average wage for the county in which the supplier/purchaser company is located;

(2) Establishes a premium employment project as a new project type within the act. Within two years from commencement of operations, a qualified company must create at least 100 new

jobs, offer all employees health insurance, and pay at least 80% of the premium. The wage for at least 100 of the new jobs must be at least 180% of the county average wage. A qualified company with a premium employment project may retain 4% of withholding taxes for five years if the average wage of the new payroll equals or exceeds 180% of the county average wage. Five percent may be retained if local incentives equal between 10% and 24% of new direct local revenue; 6% may be retained if the local incentives are between 25% and 49% of new direct local revenue; and 8% may be retained if local incentives equal 50% or more of new direct local revenue. If the withholding taxes are not sufficient to provide the entire benefit due to the company, the department will issue a refundable tax credit for the difference. Tax credits issued for premium employment projects will not be considered when issuing tax credits for technology business projects or high-impact projects, nor will they be counted toward the total amount of tax credits issued for the act as a whole. If the qualified company does not pay at least 100 new employees wages equal to at least 180% of the county average wage, the qualified company will not receive tax credits for the balance of the benefit period but may continue to keep the withholding taxes if it otherwise meets the requirements of a quality jobs small and expanding business or a high-impact project;

(3) Revises the definition of "project facility" so that it may include separate buildings located within 15 miles of each other. Currently, the buildings must be within one mile of each other;

(4) Allows a company which has filed or announced its intention to file for bankruptcy on or after January 1, 2009, to be a qualifying company for the Quality Jobs Program. Currently, any company which has filed for bankruptcy or has publicly announced its intention to file for bankruptcy protection is prohibited from being deemed a qualifying company for the purposes of the program. A qualifying company can be eligible if it:

(a) Certifies to the department that it plans to reorganize and not to liquidate; and

(b) Produces proof after its bankruptcy petition has been filed that it is not delinquent in filing any tax returns or making any payments due to the state including, but not limited to, all tax payments due after the filing of the bankruptcy petition and under the terms of the plan of reorganization;

(5) Revises the definition of "technology business project" as it relates to the act to include certain clinical molecular diagnostic laboratories;

(6) Specifies how the department must apply the definition of

"project facility" when a business that has already received an approved notice of intent later files another notice of intent;

(7) Eliminates the per-company annual cap on technology business projects within the program. Currently, the per-company cap is \$500,000;

(8) Eliminates the per-company annual cap on high-impact projects within the program. Currently, the per-company cap is \$750,000 or \$1 million under certain conditions; and

(9) Increases the annual cap on the program from \$60 million to \$100 million. This cap will not include tax credits issued for premium employment projects.

MISSOURI JOBS FOR TECHNOLOGY AND SCIENCE DISTRICT (MO-JTS)
PROGRAM (Section 620.1895)

The substitute establishes the Missouri Jobs for Technology and Science District (MO-JTS) Program which:

(1) Allows the governing body of a municipality to establish a MO-JTS district. A MO-JTS project may be implemented in the district according to a MO-JTS plan. The district, plan, and project must be established or adopted by ordinance. The substitute specifies the requirements of a MO-JTS plan and the findings a municipality must make before adopting a MO-JTS plan;

(2) Defines "MO-JTS revenues" as 50% of the incremental increase in the general revenue portion of eligible state sales tax revenues received under Section 144.020 and up to 100% of the state income tax withheld on behalf of new employees by the businesses located within the MO-JTS project. Sales tax revenue attributable to retail sales will only be included in this amount if it can be proven that the sales tax revenue is attributable to new sources which did not exist in the district in the baseline year. The substitute specifies what portion of sales tax revenue will be deemed MO-JTS revenue for businesses that existed before the formation of the district and for businesses which relocate to the district;

(3) Requires a MO-JTS project to be completed within 25 years; and

(4) Specifies that a MO-JTS project cannot obtain land by eminent domain.

MISSOURI ADVANTAGE ACT (Sections 620.2056, 620.2059, 620.2062, 620.2065, 620.2068, 620.2071, and 620.2074)

The substitute establishes the Missouri Advantage Act which allows applicants to qualify for benefits in one of five tiers as follows:

- (1) Tier one requires an investment of at least \$1 million in qualified property and hiring at least 10 new employees;
- (2) Tier two requires investment of at least \$3 million in qualified property and hiring at least 30 new employees;
- (3) Tier three requires hiring at least 30 new employees;
- (4) Tier four requires investment of at least \$10 million in qualified property and hiring at least 100 new employees; and
- (5) Tier five requires investment of at least \$30 million in qualified property.

Taxpayers who qualify for tier one, two, three, or four projects are entitled to a credit equal to 3% times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least 60% of the Missouri average annual wage for the year in which the application is made; 4% of this amount if the average wage of the new employees equals at least 75% of the Missouri average annual wage; 5% if the average wage of the new employees equals at least 100% of the Missouri average annual wage; and 6% if the average wage of the new employees equals at least 125% of the Missouri average annual wage.

Taxpayers who meet the requirements for tier two or tier four projects will receive a credit equal to 10% of the investment made in qualified property at the project. Taxpayers who meet the requirements for tier one projects will receive a credit equal to 3% of the investment made in the qualified property at the project.

To utilize these incentives, taxpayers must submit an application to the Department of Economic Development. The substitute specifies the requirements of the application, including application fees. After an application is approved, the department and the taxpayer will enter into a written agreement. The requirements of the agreement are specified in the substitute.

Any taxpayer receiving benefits under this act cannot simultaneously receive benefits from the Quality Jobs Act for any project.

Tax credits for all tiers can be used to offset income taxes

under Chapter 143.

Tax credits for tier one, two, three, and four projects can also be used:

(1) To offset the taxpayer's withholding taxes to the extent that the liability is attributable to the number of new employees at the project; and

(2) To obtain a refund of sales and use taxes which are not otherwise refundable and which are paid on purchases, including rentals. The substitute specifies how an applicant may claim a refund and when it will be paid. Interest will be allowed on any refunds.

Tax credits may be carried forward for up to nine years for tier one and three projects and for up to 14 years for tier two or four projects.

If a taxpayer with a tier one or three project fails to meet the required levels of employment or investment within four years after the date on which the application was submitted, all or a portion of the incentives can be recaptured or disallowed. If a taxpayer with a tier two, tier four, or tier five project fails to meet the required levels of employment or investment within six years after the date on which the application was submitted, all or a portion of the incentives can be recaptured or disallowed.

The Missouri Incentives Fund is created which will consist of application fees submitted by taxpayers. Upon appropriation, moneys in the fund will be used solely for the administration of the act.

The substitute requires the department to submit an annual report to the General Assembly by July 15. The substitute specifies the requirements of the report.

Tax credits are not transferrable except in situations specified in the substitute.

MISCELLANEOUS PROVISIONS

The substitute:

(1) Authorizes municipalities to annex a land parcel used as a research park only if all owners of the property consent in writing, the parcel has not been sold within the previous six months, and the municipality and county adopt reciprocal authorizing ordinances (Section 71.275);

(2) Allows a business headquarters to receive tax credits for new or expanding businesses. Expansions at headquarter facilities will be considered separate business facilities and entitled to the credits if at least 25 new employees and \$1 million of new investment are attributed to the expansion. Buildings on multiple non-contiguous properties will be considered one facility if they are in the same county or municipality. No headquarters will receive the credits for facilities commencing or expanding operations after January 1, 2020 (Section 135.155);

(3) Increases the amount of tax credits which can be utilized for qualified equity investments under the New Markets Tax Credit Program from \$15 million to \$27.5 million per fiscal year and allows investments to be made through Fiscal Year 2012. Currently, no qualified equity investments can be made under the program beyond Fiscal Year 2010 (Section 135.680);

(4) Authorizes, beginning January 1, 2010, an income tax credit for costs associated with a taxpayer's renovation of a rented residence. The rental property must be a multi-family dwelling with at least two units, one of which must be occupied by the taxpayer. The credit will be equal to 20% of the renovation's costs, up to \$2,500 per taxpayer. The tax credit will be issued on a first-come, first-served basis and is not refundable or transferable but can be carried forward for three years. No more than \$5 million of these tax credits can be issued in any fiscal year. (Section 135.1160);

(5) Allows airports, beginning January 1, 2009, to retain all revenues received from enplanement sales taxes collected from passengers. The revenues must be used solely for marketing expenses incurred by the airport (Section 144.022);

(6) Authorizes a sales tax exemption, beginning January 1, 2010, on all electrical energy, gas, water, and other utilities including telecommunications services, machinery, equipment, or computers, and all retail sales of tangible personal property and materials for the purpose of constructing, repairing, or remodeling facilities used by data center and server farm facilities that are more than 50,000 square feet (Section 144.055);

(7) Increases, beginning January 1, 2010, the outstanding shares and surplus threshold amount used to calculate a corporation's annual franchise tax from \$1 million to \$10 million (Section 147.010);

(8) Reduces the amount of tax credits that can be authorized annually for the Family Development Account Program from \$4

million to \$300,000 beginning July 1, 2010 (Section 208.770);

(9) Specifies that, under certain conditions, an out-of-state wholesale drug distributor that is a drug manufacturer which produces and distributes from a facility inspected and approved by the federal Food and Drug Administration will not be required to be licensed but must register its business name and address with the Board of Pharmacy within the Department of Insurance, Financial Institutions and Professional Registration and pay a \$10 filing fee. This applies to wholesale drug distributors located in a foreign country if they are authorized and in good standing to operate as drug manufacturers within that jurisdiction (Section 338.337);

(10) Removes the provision prohibiting the Missouri Public Service Commission from having jurisdiction over the rates, financing, accounting, or management of any electrical corporation operating as a not-for-profit cooperative (Section 393.110);

(11) Expands the list of activities for which a taxpayer may receive a remediation tax credit to include up to 100% of the costs of environmental insurance premiums and the backfill of areas where contaminated soil excavation occurs (Section 447.708); and

(12) Limits the amount of tax credits which can be authorized for Brownfield Remediation to \$60 million per fiscal year. Currently, the program does not have a cap (Section 447.708).

The provisions regarding income tax credits for the renovation of a rental residence will expire December 31 six years from the effective date of the bill and the provisions regarding enplanement sales taxes will expire December 31, 2015.

The substitute contains an emergency clause for the provisions regarding transportation development districts, Qualified Research Expenses Tax Credit, Quality Jobs Act, Missouri Jobs for Technology and Science District Program, Missouri Advantage Act, annexation of a research park, New Markets Tax Credit Program, sales tax exemption for data center and server farm facilities, wholesale drug distributors, remediation tax credit, and Brownfield Remediation Tax Credit limit.

FISCAL NOTE: Estimated Cost on General Revenue Fund of More than \$829,158 to More than \$43,329,158 in FY 2010, More than \$8,090,471 to More than \$55,610,471 in FY 2011; and More than \$8,117,775 to More than \$55,637,431 in FY 2012. Estimated Effect on Other State Funds of an income of Unknown to a cost of Unknown in FY 2010, FY 2011, and FY 2012.

PROPONENTS: Supporters say that the state recruited businesses to locate in a specific research park based on the taxes that were in place at the time. Since then, the city which borders the research park tried to annex it for the sole purpose of assessing franchise taxes on those businesses. It was a tax grab by the city. The bill will prevent this from happening again, which is important since the state promised these businesses a certain tax environment. The businesses are going to leave if they cannot receive assurance that they will not be annexed.

Testifying for the bill were Senator Rupp; Representative Dieckhaus; and Missouri Chamber of Commerce and Industry.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say that they do not want counties to have the ability to stop the annexation if the land owners and the city both want the annexation to proceed.

Testifying on the bill was Missouri Municipal League.