

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1865
96TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means and Fiscal Oversight, May 10, 2012, with recommendation that the Senate Committee Substitute do pass.

6084S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 67.463, 67.469, and 67.1305, RSMo, and to enact in lieu thereof nine new sections relating solely to due diligence given in consideration of economic development incentives.

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

Section A. Sections 67.463, 67.469, and 67.1305, RSMo, are repealed and
2 nine new sections enacted in lieu thereof, to be known as sections 67.095, 67.463,
3 67.469, 67.1305, 620.007, 620.009, 620.019, 620.1895, and 1, to read as follows:

**67.095. 1. A political subdivision shall hold a public hearing on
2 the issuance of any of the political subdivision's bonds that have a
3 pledge of future appropriations securing the bond's debt service before
4 issuing any such bond. Notice of the public hearing shall be published
5 once each week for two consecutive weeks in a newspaper of general
6 circulation located in the political subdivision and qualified to publish
7 legal notices under section 493.050. If there is no such newspaper
8 located in the political subdivision, the notice of public hearing shall
9 be published in a newspaper of general circulation located in the
10 county where the political subdivision is located and qualified under
11 section 493.050. If there is no such newspaper in the county, the notice
12 of public hearing shall be published in a newspaper of general
13 circulation located in an adjoining county and qualified under section
14 493.080. The last insertion of the notice shall not be less than ten days
15 before the date stated for the public hearing.**

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

16 **2. Such notice provided pursuant to this section shall inform the**
17 **public that:**

18 **(1) Issuance of the bond may result in adverse consequences for**
19 **the political subdivision, including a reduction in the political**
20 **subdivision's credit rating or an increase in the cost of future**
21 **borrowing by the political subdivision; and**

22 **(2) That a successful bond may have a positive impact on the**
23 **community.**

24 **3. Any political subdivision holding a public hearing as provided**
25 **in subsection 1 of this section shall allow public testimony and such**
26 **hearing shall be held at a regularly scheduled meeting of the governing**
27 **body of the political subdivision.**

28 **4. This section shall not apply to refinancing of current**
29 **indebtedness.**

30 **5. This section shall not apply to a political subdivision that,**
31 **pursuant to either a charter or other ballot measure approved by its**
32 **voters, has enacted a policy that reflects best practices for the prudent**
33 **use of debt, including bonds, and the use of economic incentives, that**
34 **contains, at a minimum, the following components:**

35 **(1) Use of an annual appropriation pledge;**

36 **(2) Debt capacity;**

37 **(3) Use of third-party professionals;**

38 **(4) Structuring and marketing of the bonds; and**

39 **(5) Management of credit ratings.**

67.463. 1. At the hearing to consider the proposed improvements and
2 assessments, the governing body shall hear and pass upon all objections to the
3 proposed improvements and proposed assessments, if any, and may amend the
4 proposed improvements, and the plans and specifications therefor, or assessments
5 as to any property, and thereupon by ordinance or resolution the governing body
6 of the city or county shall order that the improvement be made and direct that
7 financing for the cost thereof be obtained as provided in sections 67.453 to 67.475.

8 2. After construction of the improvement has been completed in
9 accordance with the plans and specifications therefor, the governing body shall
10 compute the final costs of the improvement and apportion the costs among the
11 property benefitted by such improvement in such equitable manner as the
12 governing body shall determine, charging each parcel of property with its
13 proportionate share of the costs, and by resolution or ordinance, assess the final

14 cost of the improvement or the amount of general obligation bonds issued or to
15 be issued therefor as special assessments against the property described in the
16 assessment roll.

17 3. After the passage or adoption of the ordinance or resolution assessing
18 the special assessments, the city clerk or county clerk shall mail a notice to each
19 property owner within the district which sets forth a description of each parcel
20 of real property to be assessed which is owned by such owner, the special
21 assessment assigned to such property, and a statement that the property owner
22 may pay such assessment in full, together with interest accrued thereon from the
23 effective date of such ordinance or resolution, on or before a specified date
24 determined by the effective date of the ordinance or resolution, or may pay such
25 assessment in annual installments as provided in subsection 4 of this section.

26 4. The special assessments shall be assessed upon the property included
27 therein concurrent with general property taxes, and shall be payable in
28 substantially equal annual installments for a duration stated in the ballot
29 measure prescribed in subsection 2 of section 67.457 or in the petition prescribed
30 in subsection 3 of section 67.457, and, if authorized, an assessment in each year
31 thereafter levied and collected in the same manner with the proceeds thereof used
32 solely for maintenance of the improvement, taking into account such assessments
33 and interest thereon, as the governing body determines. The first installment
34 shall be payable after the first collection of general property taxes following the
35 adoption of the assessment ordinance or resolution unless such ordinance or
36 resolution was adopted and certified too late to permit its collection at such time.
37 All assessments shall bear interest at such rate as the governing body
38 determines, not to exceed the rate permitted for bonds by section
39 108.170. Interest on the assessment between the effective date of the ordinance
40 or resolution assessing the assessment and the date the first installment is
41 payable shall be added to the first installment. The interest for one year on all
42 unpaid installments shall be added to each subsequent installment until paid. In
43 the case of a special assessment by a city, all of the installments, together with
44 the interest accrued or to accrue thereon, may be certified by the city clerk to the
45 county clerk in one instrument at the same time. Such certification shall be good
46 for all of the installments, and the interest thereon payable as special
47 assessments.

48 5. Special assessments shall be collected and paid over to the city
49 treasurer or county treasurer in the same manner as taxes of the city or county

50 are collected and paid. In any county [of the first classification with more than
51 one hundred thirty-five thousand four hundred but fewer than one hundred
52 thirty-five thousand five hundred inhabitants], the county collector may collect
53 a fee as prescribed by section 52.260 for collection of assessments under this
54 section.

67.469. A special assessment authorized under the provisions of sections
2 67.453 to 67.475 shall be a lien, from the date of the assessment, on the property
3 against which it is assessed on behalf of the city or county assessing the same to
4 the same extent as a tax upon real property. The lien may be foreclosed in the
5 same manner as a tax upon real property by land tax sale pursuant to chapter
6 140 or, **if applicable to that county, chapter 141, or**, [by judicial foreclosure
7 proceeding.] at the option of the governing body, **by judicial foreclosure**
8 **proceeding**. Upon the foreclosure of any such lien, whether by land tax sale or
9 by judicial foreclosure proceeding, the entire remaining assessment may become
10 due and payable and may be recoverable in such foreclosure proceeding at the
11 option of the governing body.

67.1305. 1. As used in this section, the term "city" shall mean any
2 incorporated city, town, or village.

3 2. In lieu of the sales taxes authorized under sections 67.1300 and
4 67.1303, the governing body of any city or county may impose, by order or
5 ordinance, a sales tax on all retail sales made in the city or county which are
6 subject to sales tax under chapter 144. The tax authorized in this section shall
7 not be more than one-half of one percent. The order or ordinance imposing the
8 tax shall not become effective unless the governing body of the city or county
9 submits to the voters of the city or county at any citywide, county or state
10 general, primary or special election a proposal to authorize the governing body
11 to impose a tax under this section. The tax authorized in this section shall be in
12 addition to all other sales taxes imposed by law, and shall be stated separately
13 from all other charges and taxes. The tax authorized in this section shall not be
14 imposed by any city or county that has imposed a tax under section 67.1300 or
15 67.1303 unless the tax imposed under those sections has expired or been
16 repealed.

17 3. The ballot of submission for the tax authorized in this section shall be
18 in substantially the following form:

19 Shall (insert the name of the city or county) impose a sales tax at
20 a rate of (insert rate of percent) percent for economic development

21 purposes?

22

YES

NO

23 If a majority of the votes cast on the question by the qualified voters voting
24 thereon are in favor of the question, then the tax shall become effective on the
25 first day of the second calendar quarter following the calendar quarter in which
26 the election was held. If a majority of the votes cast on the question by the
27 qualified voters voting thereon are opposed to the question, then the tax shall not
28 become effective unless and until the question is resubmitted under this section
29 to the qualified voters and such question is approved by a majority of the
30 qualified voters voting on the question, provided that no proposal shall be
31 resubmitted to the voters sooner than twelve months from the date of the
32 submission of the last proposal.

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

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

45 6. Not later than the tenth day of each month the director of revenue shall
46 distribute all moneys deposited in the trust fund during the preceding month to
47 the city or county which levied the tax. Such funds shall be deposited with the
48 county treasurer of each such county or the appropriate municipal officer in the
49 case of a municipal tax, and all expenditures of funds arising from the local
50 economic development sales tax trust fund shall be in accordance with this
51 section.

52 7. The director of revenue may authorize the state treasurer to make
53 refunds from the amounts in the trust fund and credited to any city or county for
54 erroneous payments and overpayments made, and may redeem dishonored checks
55 and drafts deposited to the credit of such cities and counties.

56 8. If any county or municipality abolishes the tax, the city or county shall

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

67 9. Except as modified in this section, all provisions of sections 32.085 and
68 32.087 shall apply to the tax imposed pursuant to this section.

69 10. (1) No revenue generated by the tax authorized in this section shall
70 be used for any retail development project, except for the redevelopment of
71 downtown areas and historic districts. Not more than twenty-five percent of the
72 revenue generated shall be used annually for administrative purposes, including
73 staff and facility costs.

74 (2) At least twenty percent of the revenue generated by the tax authorized
75 in this section shall be used solely for projects directly related to long-term
76 economic development preparation, including, but not limited to, the following:

- 77 (a) Acquisition of land;
- 78 (b) Installation of infrastructure for industrial or business parks;
- 79 (c) Improvement of water and wastewater treatment capacity;
- 80 (d) Extension of streets;
- 81 (e) Public facilities directly related to economic development and job
82 creation; and
- 83 (f) Providing matching dollars for state or federal grants relating to such
84 long-term projects.

85 (3) The remaining revenue generated by the tax authorized in this section
86 may be used for, but shall not be limited to, the following:

- 87 (a) Marketing;
- 88 (b) Providing grants and loans to companies for job training, equipment
89 acquisition, site development, and infrastructures;
- 90 (c) Training programs to prepare workers for advanced technologies and
91 high skill jobs;
- 92 (d) Legal and accounting expenses directly associated with the economic

93 development planning and preparation process;

94 (e) Developing value-added and export opportunities for Missouri
95 agricultural products.

96 11. All revenue generated by the tax shall be deposited in a special trust
97 fund and shall be used solely for the designated purposes. If the tax is repealed,
98 all funds remaining in the special trust fund shall continue to be used solely for
99 the designated purposes. Any funds in the special trust fund which are not
100 needed for current expenditures may be invested by the governing body in
101 accordance with applicable laws relating to the investment of other city or county
102 funds.

103 12. (1) Any city or county imposing the tax authorized in this section
104 shall establish an economic development tax board. The volunteer board shall
105 receive no compensation or operating budget.

106 (2) The economic development tax board established by a city shall consist
107 of **at least** five members, **but may be increased to nine members. Either**
108 **a five-member or nine-member board shall be designated in the order**
109 **or ordinance imposing the sales tax authorized by this section, and are**
110 to be appointed as follows:

111 (a) One [member] **or two members** shall be appointed by the school
112 districts included within any economic development plan or area funded by the
113 sales tax authorized in this section. Such member shall be appointed in any
114 manner agreed upon by the affected districts;

115 (b) Three **or five** members shall be appointed by the chief elected officer
116 of the city with the consent of the majority of the governing body of the city;

117 (c) One [member] **or two members** shall be appointed by the governing
118 body of the county in which the city is located.

119 (3) The economic development tax board established by a county shall
120 consist of seven members, to be appointed as follows:

121 (a) One member shall be appointed by the school districts included within
122 any economic development plan or area funded by the sales tax authorized in this
123 section. Such member shall be appointed in any manner agreed upon by the
124 affected districts;

125 (b) Four members shall be appointed by the governing body of the county;
126 and

127 (c) Two members from the cities, towns, or villages within the county
128 appointed in any manner agreed upon by the chief elected officers of the cities or

129 villages.

130 Of the members initially appointed, three shall be designated to serve for terms
131 of two years, and the remaining members shall be designated to serve for a term
132 of four years from the date of such initial appointments. **If there are nine**
133 **members initially appointed, the sixth, seventh, eighth, and ninth**
134 **members shall be designated to serve for terms of two years.** Thereafter,
135 the members appointed shall serve for a term of four years, except that all
136 vacancies shall be filled for unexpired terms in the same manner as were the
137 original appointments.

138 **(4) If an economic development tax board established by a city**
139 **is already in existence on August 28, 2011, any increase in the number**
140 **of members of the board shall be designated in an order or**
141 **ordinance. The sixth, seventh, eighth, and ninth members shall be**
142 **appointed to a term with an expiration coinciding with the expiration**
143 **of the terms of the three board member positions that were originally**
144 **appointed to terms of two years. Thereafter, the additional members**
145 **appointed shall serve for a term of four years, except that all vacancies**
146 **shall be filled for unexpired terms in the same manner as were the**
147 **additional appointments.**

148 13. The board, subject to approval of the governing body of the city or
149 county, shall consider economic development plans, economic development
150 projects, or designations of an economic development area, and shall hold public
151 hearings and provide notice of any such hearings. The board shall vote on all
152 proposed economic development plans, economic development projects, or
153 designations of an economic development area, and amendments thereto, within
154 thirty days following completion of the hearing on any such plan, project, or
155 designation, and shall make recommendations to the governing body within
156 ninety days of the hearing concerning the adoption of or amendment to economic
157 development plans, economic development projects, or designations of an economic
158 development area. The governing body of the city or county shall have the final
159 determination on use and expenditure of any funds received from the tax imposed
160 under this section.

161 14. The board may consider and recommend using funds received from the
162 tax imposed under this section for plans, projects or area designations outside the
163 boundaries of the city or county imposing the tax if, and only if:

164 (1) The city or county imposing the tax or the state receives significant

165 economic benefit from the plan, project or area designation; and

166 (2) The board establishes an agreement with the governing bodies of all
167 cities and counties in which the plan, project or area designation is located
168 detailing the authority and responsibilities of each governing body with regard
169 to the plan, project or area designation.

170 15. Notwithstanding any other provision of law to the contrary, the
171 economic development sales tax imposed under this section when imposed within
172 a special taxing district, including but not limited to a tax increment financing
173 district, neighborhood improvement district, or community improvement district,
174 shall be excluded from the calculation of revenues available to such districts, and
175 no revenues from any sales tax imposed under this section shall be used for the
176 purposes of any such district unless recommended by the economic development
177 tax board established under this section and approved by the governing body
178 imposing the tax.

179 16. The board and the governing body of the city or county imposing the
180 tax shall report at least annually to the governing body of the city or county on
181 the use of the funds provided under this section and on the progress of any plan,
182 project, or designation adopted under this section and shall make such report
183 available to the public.

184 17. Not later than the first day of March each year the board shall submit
185 to the joint committee on economic development a report, not exceeding one page
186 in length, which must include the following information for each project using the
187 tax authorized under this section:

188 (1) A statement of its primary economic development goals;

189 (2) A statement of the total economic development sales tax revenues
190 received during the immediately preceding calendar year;

191 (3) A statement of total expenditures during the preceding calendar year
192 in each of the following categories:

193 (a) Infrastructure improvements;

194 (b) Land and or buildings;

195 (c) Machinery and equipment;

196 (d) Job training investments;

197 (e) Direct business incentives;

198 (f) Marketing;

199 (g) Administration and legal expenses; and

200 (h) Other expenditures.

201 18. The governing body of any city or county that has adopted the sales
 202 tax authorized in this section may submit the question of repeal of the tax to the
 203 voters on any date available for elections for the city or county. The ballot of
 204 submission shall be in substantially the following form:

205 Shall (insert the name of the city or county) repeal the sales tax
 206 imposed at a rate of (insert rate of percent) percent for economic
 207 development purposes?

208 YES NO

209 If a majority of the votes cast on the proposal are in favor of the repeal, that
 210 repeal shall become effective on December thirty-first of the calendar year in
 211 which such repeal was approved. If a majority of the votes cast on the question
 212 by the qualified voters voting thereon are opposed to the repeal, then the sales
 213 tax authorized in this section shall remain effective until the question is
 214 resubmitted under this section to the qualified voters of the city or county, and
 215 the repeal is approved by a majority of the qualified voters voting on the question.

216 19. Whenever the governing body of any city or county that has adopted
 217 the sales tax authorized in this section receives a petition, signed by ten percent
 218 of the registered voters of the city or county voting in the last gubernatorial
 219 election, calling for an election to repeal the sales tax imposed under this section,
 220 the governing body shall submit to the voters a proposal to repeal the tax. If a
 221 majority of the votes cast on the question by the qualified voters voting thereon
 222 are in favor of the repeal, that repeal shall become effective on December
 223 thirty-first of the calendar year in which such repeal was approved. If a majority
 224 of the votes cast on the question by the qualified voters voting thereon are
 225 opposed to the repeal, then the tax shall remain effective until the question is
 226 resubmitted under this section to the qualified voters and the repeal is approved
 227 by a majority of the qualified voters voting on the question.

228 20. If any provision of this section or section 67.1303 or the application
 229 thereof to any person or circumstance is held invalid, the invalidity shall not
 230 affect other provisions or application of this section or section 67.1303 which can
 231 be given effect without the invalid provision or application, and to this end the
 232 provisions of this section and section 67.1303 are declared severable.

620.007. The department of economic development shall require
 2 **start-up companies that apply for economic development incentives,**
 3 **where the incentive is provided up-front, to provide verification of**
 4 **financial information when an application for such incentives is**

5 submitted to the department. In complying with this section, the
6 department shall define "start-up company".

620.009. 1. The department of economic development shall share
2 either by electronic copy of the original source or as close as a
3 reproduction as possible all adverse information it has about a
4 company seeking state and local economic development incentives with
5 all local governments, local not-for-profit economic development
6 organizations, and economic development officials competing for the
7 company's business.

8 2. Local governments, local not-for-profit economic development
9 organizations, and economic development officials working with a
10 company seeking state or local economic development incentives shall
11 also share with the department of economic development all adverse
12 information received about a company.

13 3. In complying with the provisions of this section, all adverse
14 information received about a company seeking state or local economic
15 development incentives shall be subject to the provisions of section
16 620.014.

17 4. In working with local governments, local not-for-profit
18 economic development organizations, and economic development
19 officials on projects, the department of economic development shall
20 designate one or more persons as the local contact for each
21 project. The designated contacts shall be the persons through whom all
22 information required in this section shall be provided. Such persons
23 shall be required to sign a nondisclosure agreement agreeing not to
24 divulge information, including company name, acquired about an
25 applicant for economic development incentives to the general public.

26 5. In complying with the provisions of this section, no person or
27 entity shall be required to violate terms of another nondisclosure
28 agreement related to the project, except that the department of
29 economic development shall not enter into a nondisclosure agreement
30 that forbids sharing of adverse information under this section.

620.019. The department of economic development shall develop
2 a rating system to apprise local governments of the department's
3 opinion on proposals for discretionary economic development
4 incentives that combine local and state resources.

620.1895. 1. For purposes of this section, the following terms

2 shall mean:

3 (1) "Benefits", retained withholdings taxes, tax credits, or grants;

4 (2) "Company", a firm, partnership, joint venture, association,
5 private or public corporation whether organized for profit or not,
6 which provides goods or services under a contract;

7 (3) "Contract", an agreement entered between a company and the
8 federal government, or any agency thereof, for the provision of goods
9 or services;

10 (4) "Department", the department of economic development;

11 (5) "Facility", the building or buildings used by a company to
12 carry out the terms of a contract;

13 (6) "Projected net fiscal benefit", the total fiscal benefit to the
14 state less any benefits provided to the taxpayer under sections 135.100
15 to 135.150, sections 100.700 to 100.850, sections 32.100 to 32.125, section
16 135.535, sections 135.950 to 135.970, or sections 620.1875 to 620.1890, as
17 determined by the department;

18 (7) "Same or substantially similar business enterprise", any
19 business activity undertaken pursuant to a contract in which the
20 nature of the products produced or sold, or activities conducted, are
21 similar in character and use or are produced, sold, performed, or
22 conducted in the same or similar manner as the company;

23 (8) "Taxpayer", a firm, partnership, joint venture, association,
24 private or public corporation whether organized for profit or not;

25 (9) "Withholding taxes", the same meaning as such term is
26 defined under section 620.1878.

27 2. Provisions of law to the contrary notwithstanding, any
28 taxpayer that occupies a facility previously occupied by another
29 company for such taxpayer's operation of the same or substantially
30 similar business enterprise shall be ineligible for benefits under the
31 business facility tax credit program created pursuant to sections
32 135.100 to 135.150, the business use incentives for large scale
33 development program created pursuant to sections 100.700 to 100.850,
34 the development tax credit program created pursuant to sections 32.100
35 to 32.125, the rebuilding communities tax credit program created
36 pursuant to section 135.535, the enhanced enterprise zone tax credit
37 program created pursuant to sections 135.950 to 135.970, or the
38 Missouri quality jobs program created pursuant to sections 620.1875 to

39 **620.1890, unless the projected net fiscal benefit to the state of the**
40 **taxpayer occupying the facility exceeds the fiscal benefit to the state**
41 **produced by the previous company occupying the facility, as**
42 **determined by the department.**

Section 1. The department of economic development shall
2 **include a conflict of interest policy in all new consulting contracts for**
3 **trade offices located in foreign countries.**

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