

# *Missouri Revised Statutes*

## **Chapter 100 Industrial Development**

August 28, 2009

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### **Title of act.**

100.250. Sections 100.250 to 100.297 shall be known and may be cited as the "Missouri Development Finance Board Act".

(L. 1982 S.B. 681, A.L. 1985 H.B. 416, A.L. 1989 H.B. 378, A.L. 1994 H.B. 1248 & 1048)

### **Definitions.**

100.255. As used in sections 100.250 to 100.297, the following terms mean:

- (1) "Board", the Missouri development finance board created by section 100.265;
- (2) "Borrower", any person, partnership, public or private corporation, association, development agency or any other entity eligible for funding under sections 100.250 to 100.297;
- (3) "Development agency", any of the following:
  - (a) A port authority established pursuant to chapter 68, RSMo;
  - (b) The bi-state development agencies established pursuant to sections 70.370 to 70.440\*, RSMo, and sections 238.010 to 238.100, RSMo;
  - (c) A land clearance for redevelopment authority established pursuant to sections 99.300 to 99.660, RSMo;
  - (d) A county, city, incorporated town or village or other political subdivision or public body of this state;
  - (e) A planned industrial expansion authority established pursuant to sections 100.300 to 100.620;
  - (f) An industrial development corporation established pursuant to sections 349.010 to 349.105, RSMo;
  - (g) A real property tax increment financing commission established pursuant to sections 99.800 to 99.865, RSMo;

(h) Any other governmental, quasi-governmental or quasi-public corporation or entity created by state law or by resolution adopted by the governing body of a development agency otherwise described in paragraphs (a) through (g) of this subdivision;

(4) "Development and reserve fund", the industrial development and reserve fund established pursuant to section 100.260;

(5) "Export finance fund", the Missouri export finance fund established pursuant to section 100.260;

(6) "Export trade activities" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication, and processing of foreign orders to and for exporters and foreign purchases and warehousing, when undertaken to export or facilitate the export of goods or services produced or assembled in this state;

(7) "Guarantee fund", the industrial development guarantee fund established by section 100.260;

(8) "Infrastructure development fund", the infrastructure development fund established under section 100.263;

(9) "Infrastructure facilities", the highways, streets, bridges, water supply and distribution systems, mass transportation facilities and equipment, telecommunication facilities, jails and prisons, sewers and sewage treatment facilities, wastewater treatment facilities, airports, railroads, reservoirs, dams and waterways in this state, acquisition of blighted real estate and the improvements thereon, demolition of existing structures and preparation of sites in anticipation of development, public facilities, and any other improvements provided by any form of government or development agency;

(10) "Jobs now fund", the jobs now fund established under section 100.260;

(11) "Jobs now projects", the purchase, construction, extension, and improvement of real estate, plants, buildings, structures, or facilities, whether or not now in existence, used or to be used primarily as infrastructure facilities or public facilities. When any entity provides a certified design or operation plan which is demonstrably less than the usual and customary average industry determination of cost for installation, construction, purchasing, extension, and improvement of real estate, manufacturing facilities, buildings, structures or facilities, including public facilities, then the entity or company providing such service may receive payment in an amount equal to the usual and customary fee for such project plus additional compensation equal to two times the percentage by which the cost of such aforementioned criteria of such facility is less than the usual and customary average industrial determination of cost for installation, construction, materials, extension and improvement of real estate, manufacturing facilities, buildings, structures, or facilities, including public facilities. Such entity shall also pay to such company providing such aforementioned service compensation equal to twenty-five percent of the amount of any annual operational costs which are lower than the customary average industry determination of cost for operation for such facility, procedure, or service for a period of time equal to one-fourth the design lifetime of such entity or five years whichever is less;

(12) "Participating lender", a lender authorized by the board to participate with the board in the making of a loan or to make loans the repayment of which is secured by the development and reserve fund;

(13) "Project", the purchase, construction, extension, and improvement of real estate, plants, buildings, structures or facilities, whether or not now in existence, used or to be used primarily as a factory, assembly plant, manufacturing plant, fabricating plant, distribution center, warehouse building, office building, port terminal or facility, transportation and transfer facility, industrial plant, processing plant, commercial or agricultural facility, nursing or retirement facility or combination thereof, recreational facility, cultural facility, public facilities, job training or other vocational training facility, infrastructure facility, video-audio telecommunication conferencing facility, office building, facility for the prevention, reduction, disposal or control of pollution, sewage or solid waste, facility for conducting export trade activities, or research and development building in connection with any of the facilities defined as a project in this subdivision. The term "project" shall also include any improvements, including, but not limited to, road or rail construction, alteration or relocation, and construction of facilities to provide utility service for any of the facilities defined as a project under this subdivision, along with any fixtures, equipment, and machinery, and any demolition and relocation expenses used in connection with any such projects and any capital used to promote and facilitate such facilities and notes payable from anticipated revenue issued by any development agency;

(14) "Public facility", any facility or improvements available for use by the general public including facilities for which user or other fees are charged on a nondiscriminatory basis.

(L. 1982 S.B. 681 § 2, A.L. 1985 H.B. 416, A.L. 1986 S.B. 664 merged with S.B. 731 merged with H.B. 989 & 1390, A.L. 1989 H.B. 378, A.L. 1990 H.B. 1564, A.L. 1992 S.B. 485, A.L. 1994 H.B. 1248 & 1048, A.L. 1997 2d Ex. Sess. S.B. 1, A.L. 1998 S.B. 829, A.L. 2004 S.B. 1155)

\*Section 70.440 was repealed by H.B. 1248 & 1048 in 1994.

**Funds established--administration, investment--no transfer to general revenue, when--increase of certain revenue calculated and allocated to Jobs Now fund.**

100.260. 1. There are hereby created four special funds, to be known as the "Industrial Development and Reserve Fund", the "Industrial Development Guarantee Fund", the "Export Finance Fund", and the "Jobs Now Fund", into which the following may be deposited as and when received and designated for deposit in one of such funds:

- (1) Any moneys appropriated by the general assembly for use by the board in carrying out the powers set forth in sections 100.250 to 100.297;
- (2) Any moneys made available through the issuance of revenue bonds under the provisions of sections 100.250 to 100.295\*;
- (3) Any moneys received from grants or which are given, donated, or contributed to the fund from any source;
- (4) Any moneys received in repayment of loans or from application fees, reserve participation fees, guarantee fees and premium payments as provided for under sections 100.250 to 100.297;
- (5) Any moneys received as interest on deposits or as income on approved investments of the fund;
- (6) Any moneys obtained from the issuance of revenue bonds or notes by the board;

(7) Any moneys that were in the industrial development fund authorized by this section, the economic development reserve authorized by section 620.215\*, RSMo, or the industrial revenue bond guarantee fund authorized by section 620.240\*, RSMo, respectively, as of September 28, 1985; and

(8) Any moneys obtained from any other available source.

2. The development and reserve fund, the guarantee fund, the jobs now fund, and the export finance fund shall be administered by the board as provided in sections 100.250 to 100.297. Separate accounts may be created within the development and reserve fund and the guarantee fund for moneys specifically appropriated, donated or otherwise received for industrial development purposes. The board may also create such other separate accounts within any of such funds as deemed necessary or appropriate by the board to carry out the duties and purposes of sections 100.250 to 100.297. All such separate accounts may be administered by a corporate trustee on behalf of the board upon the terms and conditions established by the board.

3. Moneys in the jobs now fund, the development and reserve fund, the guarantee fund, and the export finance fund shall be invested by the board in the manner prescribed by the board and any interest earned on invested moneys shall accrue to the benefit of the respective fund.

4. None of the funds and accounts of the board shall be considered a state fund, and money deposited therein may not be appropriated therefrom, nor shall any money deposited therein be subject to the provisions of section 33.080, RSMo.

5. The commissioner of administration shall annually calculate the increased amount of revenue to the state treasury due to the provisions of sections 135.155, 135.286, 135.546, and subsection 7 of section 620.1039, RSMo, as enacted or modified by this act\*\* and shall allocate up to twelve million dollars of such revenue to the jobs now fund.

(L. 1982 S.B. 681 § 3, A.L. 1985 H.B. 416, A.L. 1986 S.B. 731, A.L. 1989 H.B. 378, A.L. 2004 S.B. 1155)

\*Sections 100.295, 620.215, and 620.240 were repealed by H.B. 416 in 1985.

\*\*"This act" (S.B. 1155, 2004) contained numerous sections. Consult Disposition of Sections table for a definitive listing.

## **Infrastructure development fund, created, purpose--lapse into general revenue, prohibited.**

100.263. An "Infrastructure Development Fund" shall be established from which moneys shall be used to make low-interest or interest-free loans, loan guarantees, or grants to local political subdivisions and to state agencies. The fund may receive funds from the federal government for infrastructure development purposes, but other public or private funds may be received by the board for deposit in the fund. The general assembly may appropriate state moneys to the fund. The infrastructure development fund shall be administered by the board under the provisions of sections 100.250 to 100.297. Any moneys remaining in the fund at the end of any fiscal year shall not revert to the general revenue fund.

(L. 1989 H.B. 378)

## **Missouri development finance board created--members, qualifications, appointment, terms--meetings--quorum--expenses.**

100.265. 1. There is hereby created within the department of economic development the "Missouri Development Finance Board", which shall constitute a body corporate and politic and shall consist of twelve members, including the lieutenant governor, the director of the department of economic development, the director of the department of natural resources, and the director of the department of agriculture. No more than five members appointed by the governor to the board shall be of the same political party. Except for the lieutenant governor, the director of the department of economic development, the director of the department of natural resources, and the director of the department of agriculture, all members shall be appointed by the governor by and with the advice and consent of the senate, and shall serve for terms of four years. The persons serving as members of the Missouri economic development, export and infrastructure board on August 28, 1994, shall become members of the Missouri development finance board for terms to expire at the same time their terms would have expired if they had remained members of the Missouri economic development, export and infrastructure board. The Missouri development finance board shall replace the Missouri economic development, export and infrastructure board. All moneys, property, any other assets or liabilities of the Missouri economic development, export and infrastructure board on August 28, 1994, shall be transferred to the Missouri development finance board. All powers, duties and functions performed by the Missouri economic development, export and infrastructure board pursuant to sections 100.250 to 100.297 shall be transferred to the Missouri development finance board.

2. Each member of the board appointed by the governor shall have resided in this state for at least five years prior to appointment. Except for the lieutenant governor, director of the department of economic development, the director of the department of natural resources, and the director of the department of agriculture, no person may be appointed to the board who is an elected officer or employee of the state, or any agency, board, commission, or authority established by the state.

3. The governor shall designate one of the members of the board to serve as chairman. The board shall meet at such times and places it shall designate. Seven members shall constitute a quorum. No vacancy in the membership shall impair the right of a quorum of the members to exercise all of the rights and powers and to perform all of the duties of the board.

4. Members of the board shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties.

(L. 1982 S.B. 681 § 4, A.L. 1985 H.B. 416, A.L. 1989 H.B. 378, A.L. 1992 S.B. 676 adopted by referendum (Proposition C) November 3, 1992, A.L. 1993 H.B. 566, A.L. 1994 H.B. 1248 & 1048, A.L. 2006 S.B. 718)

### CROSS REFERENCE:

Annual report for tax credits, RSMo 320.092

## **Board's powers and duties--rules, authority to promulgate.**

100.270. The board shall have the power to:

(1) Sue and be sued in its official name;

- (2) Adopt and use an official seal;
- (3) Confer with agencies of the state and development agencies, and with representatives of business, industry, and labor for the purpose of promoting the economic development of this state;
- (4) Consider and review applications for loans to be made from the development and reserve fund or for loans, bonds or notes to be made by or secured by the development and reserve fund, the guarantee fund, the export finance fund or the infrastructure development fund or any other available money, under sections 100.250 to 100.297, and for grants or loans to be made by or secured by the jobs now fund;
- (5) Enter into agreements with development agencies, borrowers, participating lenders and others to implement any of the provisions of sections 100.250 to 100.297;
- (6) Direct disbursements from the development and reserve fund, the guarantee fund, the export finance fund, the infrastructure development fund, and the jobs now fund as provided in sections 100.250 to 100.297;
- (7) Administer the development and reserve fund, the guarantee fund, the export finance fund, the infrastructure development fund, and the jobs now fund and invest any portion of such funds not required for immediate disbursement in obligations of the United States, or any agency or instrumentality of the United States, in obligations of the state of Missouri and its political subdivisions, in certificates of deposit and time deposits or other obligations of banks and savings and loan associations or in such other obligations as may be prescribed by the board;
- (8) Apply for and accept gifts, grants, appropriations, loans or contributions to the development and reserve fund, the guarantee fund, the export finance fund, the infrastructure development fund, and the jobs now fund from any source, public or private, and enter into contracts or other transactions with any federal or state agency, any development agency, private organization, or any other source in furtherance of the purposes of sections 100.250 to 100.297, and do any and all things necessary in order to avail itself of such aid and cooperation;
- (9) Issue, from time to time, its negotiable revenue bonds or notes in such principal amounts as, in its opinion, shall be necessary to provide sufficient funds for achieving its purposes;
- (10) Establish reserves to secure bonds, notes and loans issued or made by the board, development agencies or participating lenders;
- (11) Make, purchase, or participate in the making or purchase, of loans, bonds, or notes to finance the costs of projects;
- (12) Procure insurance, letters of credit, or other form of credit enhancement, to secure the payment of principal and interest on any loans, bonds or notes or other obligations of the board;
- (13) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
- (14) Sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property, or any interest therein, wherever situated;

- (15) Conduct hearings and other methods of examination, and authorize any of its members to do so, on any matter material for its information and necessary to the exercise of the duties of the board;
- (16) Employ and fix the compensation of an executive director and such other agents or employees as it considers necessary;
- (17) Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted;
- (18) Assess or charge a fee for each application it receives for funding for a project or a jobs now project and assess or charge other fees as the board determines to be reasonable to carry out its purposes, including, but not limited to, fees or premiums for loans made from the development and reserve fund and the export finance fund and for loans, bonds or notes secured by the development and reserve fund, the guarantee fund, the export finance fund or the infrastructure development fund or the jobs now fund;
- (19) Make all expenditures which are incident and necessary to carry out its purposes and powers;
- (20) Take such action, enter into such agreements and exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in sections 100.250 to 100.297;
- (21) Insure, coinsure, guarantee loans and make loans relating to qualified export transactions and adopt criteria, by means of rules and regulations, establishing which exporters shall be eligible for the insurance, coinsurance, loan guarantees and loans which may be extended by the board;
- (22) Do all things necessary to ensure full participation by the state of Missouri in any federal program which may relate to the construction, repair, replacement or further development of the infrastructure of the state and its political subdivisions;
- (23) Receive funds from the federal government for deposit into the infrastructure development fund or the jobs now fund and authorize disbursements therefrom. The board may enter into agreements with agencies of the federal government and may, on behalf of the state of Missouri, do all things necessary to ensure full participation by the state of Missouri in any federal program which may relate to the repair, replacement or further development of the infrastructure of the state and its political subdivisions;
- (24) Set guidelines and priorities for loans, loan guarantees or grants from the infrastructure development fund. The board is the sole state agency authorized to set such guidelines and priorities with respect to the infrastructure development fund on behalf of the state or any of its political subdivisions, and loans, loan guarantees, or grants shall only be made upon approval of the board;
- (25) Make equity investments in or otherwise acquire ownership interests in: for-profit and not-for-profit federal- or state-authorized community development corporations; small business investment companies, including minority or specialized small business investment companies; and microloan corporations and similar lending institutions, when such investments are deemed to enhance the benefit of the public;
- (26) Make investments in Missouri certified capital companies, as defined by subdivision (5) of subsection 2 of section 135.500, RSMo, or other investment companies for investment in qualified Missouri businesses, as defined by subdivision (14) of subsection 2 of section 135.500, RSMo. All investments made by the board for the eventual investment in qualified Missouri businesses shall be matched by an equivalent investment made by the certified capital company or other investment firm for

investment into qualified Missouri businesses. All investments made into Missouri qualified businesses under the provisions of this subdivision shall be in the form of equity or unsecured debt financing. No investment shall be made by the board under the provisions of this subdivision without the approval of the director of the department of economic development; and

(27) Make loans and grants from the jobs now fund in accordance with the provisions of section 100.293.

(L. 1982 S.B. 681 § 5, A.L. 1985 H.B. 416, A.L. 1986 S.B. 731, A.L. 1989 H.B. 378, A.L. 1994 H.B. 1248 & 1048, A.L. 1996 H.B. 1237, A.L. 2004 S.B. 1155)

CROSS REFERENCE:

Multinational banks, securities and obligation of, investment in, when, 409.950

### **Bonds and notes issued--approved as investment, who may invest--tax exemptions, exceptions--power to contract with development agency.**

100.275. 1. The board may at any time issue revenue bonds for the purpose of paying any part of the cost of any project or projects, or part thereof, and for the purpose of refunding any of its bonds or the bonds of any development agency. Every issue of its bonds shall be payable out of the revenues of the board which may be pledged for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds or pledging any specified revenues. The bonds shall be authorized by resolution of the board, shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution of the board shall specify. The bonds shall be in such denominations, bear interest at such rates, be in such form, either coupon or registered, be issued in such manner, be payable in such place or places and be subject to redemption as such resolution may provide. The bonds of the board may be sold at public or private sale, as the board may specify, at such price or prices as the board shall determine, but at not less than ninety-five percent of the principal amount thereof, and at such interest rate as the board shall determine, notwithstanding the provisions of section 108.170, RSMo.

2. The board may issue notes payable from the proceeds of bonds to be issued in the future or from such other sources as the board may specify as in the case of bonds. Such notes shall mature in not more than five years and shall be sold at public or private sale, as the board may specify, at not less than ninety-five percent of the principal amount thereof and at such interest rate as the board shall determine, notwithstanding the provisions of section 108.170, RSMo. The other details with respect to such notes shall be determined by the board as in the case of bonds.

3. The state shall not be liable on any notes or bonds of the board. Such notes or bonds shall not be a debt of the state and shall contain on the faces thereof a statement to such effect.

4. No member of the board nor any person authorized to execute notes or bonds of the board shall be liable personally on such notes or bonds or shall be subject to any personal liability or accountability by reason of the issuance thereof.

5. The notes and bonds of the board are securities in which all public bodies and political subdivisions of this state; all insurance companies and associations and all other persons carrying on an insurance business; all banks, trust companies, saving associations, savings and loan associations, credit unions, and investment companies; all administrators, guardians, executors, trustees, and other fiduciaries; and all

other persons who now or may hereafter be authorized to invest in notes and bonds or other obligations of this state may properly and legally invest funds, including capital, in their control or belonging to them.

6. The board shall not be required to pay any taxes or any assessments whatsoever to this state, any political subdivision of this state, or any other governmental agency of this state. The notes and bonds of the board, and the income therefrom, shall, at all times, be exempt from any taxes and any assessments, except for estate taxes, gift taxes, and taxes on transfers.

7. Nothing contained in sections 100.250 to 100.297 shall be deemed to constitute a use of state funds or credit in violation of the provisions of article III, sections 37, 38(a) and 39, of the Missouri Constitution.

8. The board shall have the power to contract with any development agency to perform any governmental service, activity or undertaking which the contracting development agency is authorized by law to perform or to issue any bonds or notes which the contracting development agency is authorized by law to issue. Any such contract shall be authorized by the governing body of the development agency and by the board and shall state the purpose of the contract and the powers and duties of the parties thereunder. Any bonds or notes issued by the board on behalf of a development agency shall be entitled to the same security as if such bonds or notes were issued directly by the development agency. In addition to any other security for such bonds or notes, the board may secure such bonds, notes or other indebtedness in the manner described in section 100.297.

(L. 1982 S.B. 681 § 6, A.L. 1985 H.B. 416, A.L. 1997 2d Ex. Sess. S.B. 1)

Effective 12-23-97

### **Employment and business opportunities required to be provided, to whom.**

100.277. Funds expended for projects authorized in sections 100.255 to 100.293 shall provide appropriate employment and business opportunities for participation by minority, women, and disadvantaged business enterprises in compliance with all state laws, rules, and regulations.

(L. 2004 S.B. 1155)

### **Project plan, approval procedure--board to review and grant loan, when--borrowing power--sale of bonds.**

100.281. 1. A request for a loan from the development and reserve fund, the infrastructure development fund, the export finance fund, or the jobs now fund to fund export trade activities or to carry out a project shall be in the form of an application for the project to the board, which application shall be in such form as the board may specify. After reviewing the application and such other information as the board may require, the board may grant all or a part of the loan request, provided the board determines that:

- (1) The project will be a benefit to the economy or infrastructure of the state;
- (2) The project will generate sufficient revenues or the borrower will otherwise have sufficient revenues available to enable the borrower to repay the loan to the development and reserve fund, the infrastructure

development fund, the export finance fund, or the jobs now fund, along with any interest to be charged;  
and

(3) In the case of an infrastructure facility project, the loan will not exceed ten million dollars.

2. Notwithstanding any other provision of law to the contrary, all development agencies, as defined in section 100.255, shall have the power to borrow funds from the board for any project, to contract with the board, and to furnish a security interest in any of their revenues or properties to the board to secure a loan from the board and to issue notes in evidence thereof upon such terms as such development agencies shall determine.

3. When the board issues bonds to provide loans for more than one infrastructure project, the board shall make a reasonable effort to sell the bonds to a purchaser that represents a group consisting of more than one underwriter.

(L. 1985 H.B. 416, A.L. 1986 S.B. 664 merged with S.B. 731 merged with H.B. 989 & 1390, A.L. 1989 H.B. 378, A.L. 1990 H.B. 1564, A.L. 2004 S.B. 1155, A.L. 2006 S.B. 718)

### **Limitations on approval of loans.**

100.282. The Missouri development finance board, the Missouri health and educational\* facilities authority, the Missouri higher education loan authority, the Missouri housing development commission, and the environmental improvement and energy resources authority shall only approve loan requests from the state, any agency or department of the state, or any state educational institution if the borrower's means of repayment is readily ascertainable and reliable. With the exception of annual appropriation debt for state-owned property, the entities listed in this section shall not approve such requests if the means of repayment is contingent upon state funding that has not been granted, unless the project has been approved by concurrent resolution of the general assembly, or similar legislative directive or approval.

(L. 2006 S.B. 718)

\*Word "education" appears in original rolls.

### **Loans secured by certain funds--standards--information required--review and certification by participating lender--board approval--fee, tax credit, limitation.**

100.286. 1. Within the discretion of the board, the development and reserve fund, the infrastructure development fund or the export finance fund may be pledged to secure the payment of any bonds or notes issued by the board, or to secure the payment of any loan made by the board or a participating lender which loan:

- (1) Is requested to finance any project or export trade activity;
- (2) Is requested by a borrower who is demonstrated to be financially responsible;
- (3) Can reasonably be expected to provide a benefit to the economy of this state;

- (4) Is otherwise secured by a mortgage or deed of trust on real or personal property or other security satisfactory to the board; provided that loans to finance export trade activities may be secured by export accounts receivable or inventories of exportable goods satisfactory to the board;
  - (5) Does not exceed five million dollars;
  - (6) Does not have a term longer than five years if such loan is made to finance export trade activities; and
  - (7) Is, when used to finance export trade activities, made to small or medium size businesses or agricultural businesses, as may be defined by the board.
2. The board shall prescribe standards for the evaluation of the financial condition, business history, and qualifications of each borrower and the terms and conditions of loans which may be secured, and may require each application to include a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as may be conducted by any participating lender.
  3. Each application for a loan secured by the development and reserve fund, the infrastructure development fund or the export finance fund shall be reviewed in the first instance by any participating lender to whom the application was submitted. If satisfied that the standards prescribed by the board are met and that the loan is otherwise eligible to be secured by the development and reserve fund, the infrastructure development fund or the export finance fund, the participating lender shall certify the same and forward the application for final approval to the board.
  4. The securing of any loans by the development and reserve fund, the infrastructure development fund or the export finance fund shall be conditioned upon approval of the application by the board, and receipt of an annual reserve participation fee, as prescribed by the board, submitted by or on behalf of the borrower.
  5. The securing of any loan by the export finance fund for export trade activities shall be conditioned upon the board's compliance with any applicable treaties and international agreements, such as the general agreement on tariffs and trade and the subsidies code, to which the United States is then a party.
  6. Any taxpayer, including any charitable organization that is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, RSMo, may, subject to the limitations provided under subsection 8 of this section, receive a tax credit against any tax otherwise due under the provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to the development and reserve fund, the infrastructure development fund or the export finance fund during the taxpayer's tax year, provided, however, the total tax credits awarded in any calendar year beginning after January 1, 1994, shall not be the greater of ten million dollars or five percent of the average growth in general revenue receipts in the preceding three fiscal years. This limit may be exceeded only upon joint agreement by the commissioner of administration, the director of the department of economic development, and the director of the department of revenue that such action is essential to ensure retention or attraction of investment in Missouri. If the board receives, as a contribution, real property, the contributor at such contributor's own expense shall have two independent appraisals conducted by appraisers certified by the Master Appraisal Institute. Both appraisals shall be submitted to the board, and the tax credit certified by the board to the contributor shall be based upon the value of the lower of the two appraisals. The board shall not certify the tax credit until the property is deeded to the board. Such

credit shall not apply to reserve participation fees paid by borrowers under sections 100.250 to 100.297. The portion of earned tax credits which exceeds the taxpayer's tax liability may be carried forward for up to five years.

7. Notwithstanding any provision of law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 6 of this section under the terms and conditions prescribed in subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the assignor for the purpose of this subsection, may sell, assign, exchange or otherwise transfer earned tax credits:

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

The taxpayer acquiring earned credits, hereinafter the assignee for the purpose of this subsection, may use the acquired credits to offset up to one hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo. Unused credits in the hands of the assignee may be carried forward for up to five years, provided all such credits shall be claimed within ten years following the tax years in which the contribution was made. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the board in writing within thirty calendar days following the effective day of the transfer and shall provide any information as may be required by the board to administer and carry out the provisions of this section. Notwithstanding any other provision of law to the contrary, the amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the par value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

8. Provisions of subsections 1 to 7 of this section to the contrary notwithstanding, no more than ten million dollars in tax credits provided under this section, may be authorized or approved annually. The limitation on tax credit authorization and approval provided under this subsection may be exceeded only upon mutual agreement, evidenced by a signed and properly notarized letter, by the commissioner of the office of administration, the director of the department of economic development, and the director of the department of revenue that such action is essential to ensure retention or attraction of investment in Missouri provided, however, that in no case shall more than twenty-five million dollars in tax credits be authorized or approved during such year. Taxpayers shall file, with the board, an application for tax credits authorized under this section on a form provided by the board. The provisions of this subsection shall not be construed to limit or in any way impair the ability of the board to authorize tax credits for issuance for projects authorized or approved, by a vote of the board, on or before the thirtieth day following the effective date of this act\*, or a taxpayer's ability to redeem such tax credits.

(L. 1985 H.B. 416, A.L. 1986 S.B. 731, A.L. 1989 H.B. 378, A.L. 1990 H.B. 1564, A.L. 1993 H.B. 566, A.L. 1994 H.B. 1248 & 1048, A.L. 2007 1st Ex. Sess H.B. 1, A.L. 2009 H.B. 191)

Effective 6-04-09

\*"This act" (H.B. 191, 2009) contained multiple effective dates.

CROSS REFERENCE:

Tax Credit Accountability Act of 2004, additional requirements, RSMo 135.800 to 135.830

## **Default procedure--subrogation to rights of lender upon payment from fund, amount.**

100.287. 1. The development and reserve fund shall be used to prevent a default in payment of principal or interest or to defray losses which may be incurred in connection with bonds, notes or loans secured by the development and reserve fund in accordance with the terms and provisions of the resolution or trust indenture of the board authorizing such bonds, notes or loans.

2. Upon certification by a participating lender that a loan secured by the development and reserve fund is in default and noncollectible, and that the property which secured the loan has been liquidated and applied against the debt, and after a review by the board and its determination of the same, the board shall distribute, from funds available in the development and reserve fund, an amount not to exceed ninety percent of the balance remaining to be paid by the borrower to the participating lender. Upon payment to a participating lender to repay any loan, the board shall become subrogated to the extent of such payment to all rights which the participating lender had against the borrower.

3. A loan or issue of bonds or notes secured by the development and reserve fund shall in no case constitute or be construed as an obligation or an indebtedness of this state or of the board, and neither the state nor the board shall be liable to repay any such loan, bonds or notes upon any condition.

(L. 1985 H.B. 416, A.L. 1986 S.B. 731)

## **Guarantees issued by board, when--application, fee--information required.**

100.291. 1. The board may issue guarantees using moneys in the guarantee fund for bonds or notes issued by the board or by development agencies when the board makes the following findings:

(1) That the owners and lessees, if any, of the projects to be financed are found to be financially responsible, and that sufficient income may reasonably be expected to be derived from the projects to amortize the interest and principal amount of the bonds or notes;

(2) That the projects will benefit the economy of this state.

2. The board shall evaluate the financial condition and business history of project owners and lessees, and may require the attachment to each application for guarantee under sections 100.250 to 100.297 a financial report and evaluation by an independent certified public accounting firm, in addition to such examination and evaluation as the board may make, in determining whether the owner or lessee meets prescribed minimum standards and qualifications before entering into any guarantee under sections 100.250 to 100.297.

3. Every development agency requesting a bond or note guarantee under sections 100.250 to 100.297 shall submit to the board supporting documents, instruments, and other evidence showing the circumstances surrounding the issuance of the bonds or notes, and an initial guarantee fee and a premium payment as required by the board, to the guarantee fund. Such fees and payments may be collected by the development agency from the owners or lessees of the projects involved.

(L. 1985 H.B. 416)

## **Guarantee agreement provisions.**

100.292. 1. Guarantee agreements for bonds or notes entered into by the board pursuant to the provisions of sections 100.250 to 100.297 shall provide that:

(1) The board guarantees, and is hereby required, to use the moneys in the guarantee fund to meet amortization payments as guaranteed under the provisions of sections 100.250 to 100.297, as the same become due, in the event, and to the extent, the board or the development agency issuing the bonds or notes is unable to meet such payments in accordance with the terms of the bond or note indenture when called on to do so; and

(2) The guarantee shall not be a general obligation of the state of Missouri, but shall be a special obligation, and in no event shall the guarantee be deemed an indebtedness of the state of Missouri, or of any political subdivision thereof, and shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

2. Whenever the board, acting under the terms of any guarantee agreement, deems it necessary to assume the obligation of maintenance of any project the amortization payments of which have been guaranteed by the board, the board may use funds available in the guarantee fund to pay insurance and maintenance costs required for the preservation of the project and to protect such fund from loss, or to minimize loss, in such manner as deemed necessary by the board.

3. In addition to the provisions required by this section the guarantee agreement shall include such other additional provisions, restrictions, and conditions as the board shall determine to be necessary, including, but not limited to, a detailing of the remedies that must be exhausted by the bondholders or noteholders prior to any enforcement of the guarantee agreement and the subrogation or other rights of the board with reference to the project and its operation in the event the board makes payment pursuant to the applicable guarantee agreement.

(L. 1985 H.B. 416)

## **Citation--jobs now recommendation committee created, membership, duties-- applications--preference given to certain projects--requests granted, determinations required.**

100.293. 1. This section, section 100.277, \* sections 135.950 to 135.973, RSMo, and sections 178.760 to 178.764, RSMo, shall be known and may be cited as the "Jobs Now Act".

2. There shall be created a "Jobs Now Recommendation Committee", comprised of representatives of the department of economic development, the department of agriculture, the department of natural resources, and the department of transportation. The committee shall establish application materials and procedures for development agencies to apply to the board for grants or low-interest or interest-free loans for the purpose of funding jobs now projects.

3. Applications shall be submitted simultaneously to the committee and the board. The committee shall review the applications and prepare and submit analyses and recommendations to the board for a determination as to approval or denial of grants or loans from the jobs now fund.
4. In reviewing applications, the board shall give preference to redevelopment projects that protect natural resources or rehabilitate existing dilapidated or inadequate infrastructure in areas defined under section 135.530, RSMo.
5. After reviewing applications and such other information as the board may require, the board may grant all or a part of a grant or loan request, provided the board determines:
  - (1) The jobs now project:
    - (a) Will not happen without the grant or loan from the board; or
    - (b) Will have a significant local economic impact; or
    - (c) Demonstrates high levels of job creation;
  - (2) In the case of a low-interest or interest-free loan, the jobs now project will generate sufficient revenues or the borrower will otherwise have sufficient revenues available to enable the borrower to repay the loan to the jobs now fund, along with any interest to be charged; and
  - (3) No loan or grant may exceed two million dollars.

(L. 2004 S.B. 1155)

\*Word "and" appears in original rolls.

**Application of provisions of other sections--state and local records laws--meetings of governmental bodies--conflict of interest or lobbying--prohibited loans--notifications of certain campaign contributions.**

100.296. 1. Except as provided in section 620.014, RSMo, sections 100.250 to 100.297 shall be subject to the provisions of sections 109.200 to 109.310, RSMo, the state and local records law, or the provisions of sections 610.010 to 610.030, RSMo, relating to the meetings of governmental bodies, and a member appointed pursuant to section 100.265 shall be exempt from the provisions of chapter 105, RSMo, provided that the member shall not vote or participate in any matter in which the member has a direct or indirect interest. For the purposes of sections 100.250 to 100.297, a "direct or indirect interest" means the ownership of ten percent or more of any class of equity securities in any corporation seeking a guarantee pursuant to the provisions of sections 100.250 to 100.297, occupying the office of vice president or other office senior to the office of vice president, or a director, of any corporation seeking a guarantee pursuant to the provisions of sections 100.250 to 100.297; provided, nothing contained in sections 100.250 to 100.297, nor the provisions of chapter 105, RSMo, shall prevent any corporation, bank, or trust company from purchasing, selling, or otherwise dealing in bonds or notes or mortgages guaranteed pursuant to the provisions of sections 100.250 to 100.297. The development and reserve fund may be pledged to secure

loans made through a participating lender with which a member of the board is affiliated so long as the member does not participate in or attempt to influence the approval of any such loan.

2. The board shall not knowingly extend or secure a loan or grant a tax credit to, or issue any bonds or enter into any other agreement with or on behalf of any business entity in which a board member, statewide elected official, state legislator or employee of this state has a substantial interest as defined in section 105.450, RSMo.

3. The board shall not knowingly extend or secure a loan or grant a tax credit to, or issue any bonds or enter into any other agreement with or on behalf of any business entity until each officer of the business entity has notified the board of all campaign contributions such officer has made within the previous two years, to the extent such contributions are not otherwise reportable by the recipient, pursuant to the provisions of chapter 130, RSMo. For the purposes of this section, "an officer" means a person who is employed by the business entity in a policy-making capacity and whose name is listed in the business entity's articles of incorporation filed with the secretary of state.

(L. 1985 H.B. 416, A.L. 1986 S.B. 731, A.L. 1994 H.B. 1248 & 1048, A.L. 1995 H.B. 414, A.L. 1996 H.B. 1237, A.L. 1997 2d Ex. Sess. S.B. 1)

Effective 12-23-97

### **Tax credit for owner of revenue bonds or notes, purpose, when, amount, limitation.**

100.297. 1. The board may authorize a tax credit, as described in this section, to the owner of any revenue bonds or notes issued by the board pursuant to the provisions of sections 100.250 to 100.297, for infrastructure facilities as defined in subdivision (9) of section 100.255, if, prior to the issuance of such bonds or notes, the board determines that:

(1) The availability of such tax credit is a material inducement to the undertaking of the project in the state of Missouri and to the sale of the bonds or notes;

(2) The loan with respect to the project is adequately secured by a first deed of trust or mortgage or comparable lien, or other security satisfactory to the board.

2. Upon making the determinations specified in subsection 1 of this section, the board may declare that each owner of an issue of revenue bonds or notes shall be entitled, in lieu of any other deduction with respect to such bonds or notes, to a tax credit against any tax otherwise due by such owner pursuant to the provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in the amount of one hundred percent of the unpaid principal of and unpaid interest on such bonds or notes held by such owner in the taxable year of such owner following the calendar year of the default of the loan by the borrower with respect to the project. The occurrence of a default shall be governed by documents authorizing the issuance of the bonds. The tax credit allowed pursuant to this section shall be available to the original owners of the bonds or notes or any subsequent owner or owners thereof. Once an owner is entitled to a claim, any such tax credits shall be transferable as provided in subsection 7 of section 100.286. Notwithstanding any provision of Missouri law to the contrary, any portion of the tax credit to which any owner of a revenue bond or note is entitled pursuant to this section which exceeds the total income tax liability of such owner of a revenue bond or note shall be carried forward and allowed as a credit against any future taxes imposed on such owner

within the next ten years pursuant to the provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo. The eligibility of the owner of any revenue bond or note issued pursuant to the provisions of sections 100.250 to 100.297 for the tax credit provided by this section shall be expressly stated on the face of each such bond or note. The tax credit allowed pursuant to this section shall also be available to any financial institution or guarantor which executes any credit facility as security for bonds issued pursuant to this section to the same extent as if such financial institution or guarantor was an owner of the bonds or notes, provided however, in such case the tax credits provided by this section shall be available immediately following any default of the loan by the borrower with respect to the project. In addition to reimbursing the financial institution or guarantor for claims relating to unpaid principal and interest, such claim may include payment of any unpaid fees imposed by such financial institution or guarantor for use of the credit facility.

3. The aggregate principal amount of revenue bonds or notes outstanding at any time with respect to which the tax credit provided in this section shall be available shall not exceed fifty million dollars.

(L. 1985 H.B. 416, A.L. 1994 H.B. 1248 & 1048, A.L. 1997 2d Ex. Sess. S.B. 1)

Effective 12-23-97

CROSS REFERENCE:

Tax Credit Accountability Act of 2004, additional requirements, RSMo 135.800 to 135.830

## **Title.**

100.700. Sections 100.700 to 100.850 shall be known as the "Missouri Business Use Incentives for Large-Scale Development Act".

(L. 1996 H.B. 1237 § 7)

## **Definitions.**

100.710. As used in sections 100.700 to 100.850, the following terms mean:

- (1) "Assessment", an amount of up to five percent of the gross wages paid in one year by an eligible industry to all eligible employees in new jobs, or up to ten percent if the economic development project is located within a distressed community as defined in section 135.530, RSMo;
- (2) "Board", the Missouri development finance board as created by section 100.265;
- (3) "Certificates", the revenue bonds or notes authorized to be issued by the board pursuant to section 100.840;
- (4) "Credit", the amount agreed to between the board and an eligible industry, but not to exceed the assessment attributable to the eligible industry's project;
- (5) "Department", the Missouri department of economic development;

(6) "Director", the director of the department of economic development;

(7) "Economic development project":

(a) The acquisition of any real property by the board, the eligible industry, or its affiliate; or

(b) The fee ownership of real property by the eligible industry or its affiliate; and

(c) For both paragraphs (a) and (b) of this subdivision, "economic development project" shall also include the development of the real property including construction, installation, or equipping of a project, including fixtures and equipment, and facilities necessary or desirable for improvement of the real property, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries and other surface obstructions; filling, grading and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications and similar facilities; off-site construction of utility extensions to the boundaries of the real property; and the acquisition, installation, or equipping of facilities on the real property, for use and occupancy by the eligible industry or its affiliates;

(8) "Eligible employee", a person employed on a full-time basis in a new job at the economic development project averaging at least thirty-five hours per week who was not employed by the eligible industry or a related taxpayer in this state at any time during the twelve-month period immediately prior to being employed at the economic development project. For an essential industry, a person employed on a full-time basis in an existing job at the economic development project averaging at least thirty-five hours per week may be considered an eligible employee for the purposes of the program authorized by sections 100.700 to 100.850;

(9) "Eligible industry", a business located within the state of Missouri which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, health or professional services. "Eligible industry" does not include a business which closes or substantially reduces its operation at one location in the state and relocates substantially the same operation to another location in the state. This does not prohibit a business from expanding its operations at another location in the state provided that existing operations of a similar nature located within the state are not closed or substantially reduced. This also does not prohibit a business from moving its operations from one location in the state to another location in the state for the purpose of expanding such operation provided that the board determines that such expansion cannot reasonably be accommodated within the municipality in which such business is located, or in the case of a business located in an incorporated area of the county, within the county in which such business is located, after conferring with the chief elected official of such municipality or county and taking into consideration any evidence offered by such municipality or county regarding the ability to accommodate such expansion within such municipality or county. An eligible industry must:

(a) Invest a minimum of fifteen million dollars, or ten million dollars for an office industry, in an economic development project; and

(b) Create a minimum of one hundred new jobs for eligible employees at the economic development project or a minimum of five hundred jobs if the economic development project is an office industry or a minimum of two hundred new jobs if the economic development project is an office industry located within a distressed community as defined in section 135.530, RSMo, or in the case of an approved

company for a project for a world headquarters of a business whose primary function is tax return preparation in any home rule city with more than four hundred thousand inhabitants and located in more than one county, create a minimum of one hundred new jobs for eligible employees at the economic development project. An industry that meets the definition of "essential industry" may be considered an eligible industry for the purposes of the program authorized by sections 100.700 to 100.850.

Notwithstanding the preceding provisions of this subdivision, a development agency, as such term is defined in subdivision (3) of section 100.255, or a corporation, limited liability company, or partnership formed on behalf of a development agency, at the option of the board, may be authorized to act as an eligible industry with such obligations and rights otherwise applicable to an eligible industry, including the rights of an approved company under section 100.850, so long as the eligible industry otherwise meets the requirements imposed by this subsection;

(10) "Essential industry", a business that otherwise meets the definition of eligible industry except an essential industry shall:

(a) Be a targeted industry;

(b) Be located in a home rule city with more than twenty-six thousand but less than twenty-seven thousand inhabitants located in any county with a charter form of government and with more than one million inhabitants or in a city of the fourth classification with more than four thousand three hundred but fewer than four thousand four hundred inhabitants and located in any county with a charter form of government and with more than one million inhabitants;

(c) Have maintained at least two thousand jobs at the proposed economic development project site each year for a period of four years preceding the year in which application for the program authorized by sections 100.700 to 100.850 is made and during the year in which said application is made;

(d) Retain, at the proposed economic development project site, the level of employment that existed at the site in the taxable year immediately preceding the year in which application for the program, authorized by sections 100.700 to 100.850, is made. Retention of such level of employment shall commence three years from the date of issuance of the certificates and continue for the duration of the certificates; and

(e) Invest a minimum of five hundred million dollars in the economic development project by the end of the third year after the issuance of the certificates under this program;

(11) "New job", a job in a new or expanding eligible industry not including jobs of recalled workers, replacement jobs or jobs that formerly existed in the eligible industry in the state. For an essential industry, an existing job may be considered a new job for the purposes of the program authorized by sections 100.700 to 100.850;

(12) "Office industry", a regional, national or international headquarters, a telecommunications operation, a computer operation, an insurance company, or a credit card billing and processing center;

(13) "Program costs", all necessary and incidental costs of providing program services including payment of the principal of premium, if any, and interest on certificates, including capitalized interest, issued to finance a project, and funding and maintenance of a debt service reserve fund to secure such certificates. Program costs shall include:

- (a) Obligations incurred for labor and obligations incurred to contractors, subcontractors, builders and materialmen in connection with the acquisition, construction, installation or equipping of an economic development project;
  - (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
  - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation or equipping of an economic development project which is not paid by the contractor or contractors or otherwise provided for;
  - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations and supervision of construction, as well as the costs for the performance of all the duties required by or consequent upon the acquisition, construction, installation or equipping of an economic development project;
  - (e) All costs which are required to be paid under the terms of any contract or contracts for the acquisition, construction, installation or equipping of an economic development project; and
  - (f) All other costs of a nature comparable to those described in this subdivision;
- (14) "Program services", administrative expenses of the board, including contracted professional services, and the cost of issuance of certificates;
- (15) "Targeted industry", an industry or one of a cluster of industries that is identified by the department as critical to the state's economic security and growth and affirmed as such by the joint committee on economic development policy and planning established in section 620.602, RSMo.

(L. 1996 H.B. 1237 § 8, A.L. 1998 H.B. 1656, A.L. 2003 H.B. 289 merged with S.B. 620, A.L. 2004 H.B. 1182 merged with S.B. 1155 merged with S.B. 1394, A.L. 2005 S.B. 343, A.L. 2006 S.B. 645)

Contingent expiration date, see § 135.284

### **Additional powers of Missouri development finance board--certificates, state credit for.**

100.720. 1. The Missouri development finance board shall have, in addition to the powers provided to it in sections 100.250 to 100.297, and with the approval of the department, all the powers necessary to carry out and effectuate the purposes and provisions of sections 100.700 to 100.850, including, but not limited to, the power to:

- (1) Provide and finance economic development projects, pursuant to the provisions of sections 100.700 to 100.850, and cooperate with eligible industries in order to promote, foster and support economic development within the state;
- (2) Conduct hearings and inquiries, in the manner and by the methods as it deems desirable, for the purpose of gathering information with respect to eligible industries and economic development projects, and for the purpose of making any determinations necessary or desirable in the furtherance of sections 100.700 to 100.850; and

(3) Negotiate the terms of, including the amount of project costs, and enter into financing agreements with eligible industries, and in connection therewith to acquire, convey, sell, mortgage, finance or otherwise dispose of any property, real or personal, loan bond proceeds, and permit the use of assessments, in connection with an economic development project, and to pay, or cause to be paid, in accordance with the provisions of a financing agreement, the program costs of an economic development project from any funds available therefor.

2. Certificates issued by the board pursuant to the provisions of sections 100.700 to 100.850 shall not constitute an indebtedness or liability of the state of Missouri within the meaning of any state constitutional provision or statutory limitation, shall not constitute a pledge of the faith and credit of the state of Missouri, shall not be guaranteed by the credit of the state, and unless approved by a concurrent resolution of the general assembly, no certificate in default shall be paid by the state of Missouri.

(L. 1996 H.B. 1237 § 9)

### **Establishment of procedures to determine eligible industries--authority to request information.**

100.730. 1. The department, in conjunction with the board, shall establish the procedures and standards for the determination and approval of eligible industries and their economic development projects by the promulgation of rules or regulations in accordance with sections 100.700 to 100.850, chapter 536, RSMo, and section 620.1066, RSMo. These rules or regulations shall mandate the evaluation of the credit worthiness of eligible industries, the number of new jobs to be provided by an economic development project to residents of the state, and the likelihood of the economic success of the economic development project. No economic development project which will result in the replacement of facilities existing in the state shall be approved by the board.

2. With respect to each eligible industry making an application to the board for incentives, and with respect to the economic development project described in the application, the board shall request relevant information, documentation and other materials and make inquiries of the applicant as necessary or appropriate. After a diligent review of relevant materials and completion of its inquiries, the board may by resolution designate an economic development project.

(L. 1996 H.B. 1237 § 10)

CROSS REFERENCE:

Tax Credit Accountability Act of 2004, additional requirements, RSMo 135.800 to 135.830

### **Financing agreement, authority to enter into.**

100.740. The board may enter into, with the approval of the department and in consultation with the office of administration, with any eligible industry, a financing agreement with respect to its economic development project. Subject to the inclusion of the mandatory provisions set forth in sections 100.700 to 100.850, the terms and provisions of each financing agreement shall be determined by negotiations between the board and the eligible industry.

### **Financing agreement, contents.**

100.750. The financing agreement shall provide in substance that:

(1) It may be assigned by the eligible industry only upon the prior written consent of the board following the adoption of a resolution by the board to such effect; and

(2) Upon default by the eligible industry in any obligations under the financing agreement or other documents evidencing, securing or related to the eligible industry's obligations, the board shall have the right, at its option, to:

(a) Declare the financing agreement or other such documents in default;

(b) Accelerate and declare the total of all such payments due by the eligible industry and sell the economic development project at public, private, or judicial sale;

(c) Pursue any remedy provided under the financing agreement or other such documents;

(d) Be entitled to the appointment of a receiver by the circuit court wherein any part of the economic development project is located; and

(e) Pursue any other applicable legal remedy.

### **Credit agreement, conditions.**

100.760. After receipt of an application, the board may, with the approval of the department, enter into an agreement with an eligible industry for a credit pursuant to sections 100.700 to 100.850 if the board determines that all of the following conditions exist:

(1) The applicant's project will create new jobs that were not jobs previously performed by employees of the applicant in Missouri;

(2) The applicant's project is economically sound and will benefit the people of Missouri by increasing opportunities for employment and strengthening the economy of Missouri;

(3) Significant local incentives with respect to the project or eligible industry have been committed, which incentives may consist of:

(a) Cash or in-kind incentives derived from any nonstate source, including incentives provided by the affected political subdivisions, private industry and/or local chambers of commerce or similar such organizations; and/or

(b) Relief from local taxes, in either case as acceptable to the board;

- (4) Receiving the credit is a major factor in the applicant's decision to go forward with the project and not receiving the credit will result in the applicant not creating new jobs in Missouri; and
- (5) Awarding the credit will result in an overall positive fiscal impact to the state.

(L. 1996 H.B. 1237 § 13, A.L. 1997 2d Ex. Sess. S.B. 1, A.L. 2009 H.B. 191)

Effective 6-04-09

### **Factors considered in awarding credit.**

100.770. In determining the credit that should be awarded, the board shall take into consideration the following factors:

- (1) The economy of the county where the projected investment is to occur;
- (2) The potential impact on the economy of Missouri;
- (3) The payroll attributable to the project;
- (4) The capital investment attributable to the project;
- (5) The amount the average wage paid by the applicant exceeds the average wage paid within the county in which the project will be located;
- (6) The costs to Missouri and the affected political subdivisions with respect to the project; and
- (7) The financial assistance that is otherwise provided by Missouri and the affected political subdivisions.

(L. 1996 H.B. 1237 § 14, A.L. 2009 H.B. 191)

Effective 6-04-09

### **Board authority to determine projects, assessments, credits and refunds, credit and assessment time limit.**

100.780. The board shall determine the amount and duration of a project and its associated assessments, credits and refunds. The credit amount may not exceed the estimated assessment. Assessments made for any project may not exceed a period of fifteen years.

(L. 1996 H.B. 1237 § 15)

### **Agreement contents.**

100.790. An agreement between the board and an eligible industry shall include all of the following:

- (1) A detailed description of the project that is the subject of the agreement;
- (2) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee of the eligible industry;
- (3) A requirement that the taxpayer shall annually report to the board the number of new employees who are performing jobs not previously performed by an employee, the total amount of salaries and wages paid to eligible employees in new jobs, and any other information the board needs to perform its duties pursuant to sections 100.700 to 100.850;
- (4) A requirement that the taxpayer shall provide written notification to the director and the board not more than thirty days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer;
- (5) Any other performance conditions that the board and the director determine are appropriate; and
- (6) A requirement that the taxpayer shall maintain operations at the project location for at least a period of time equal to the number of years for which credits are authorized in the financing agreement with the board.

(L. 1996 H.B. 1237 § 16)

### **Noncompliance by eligible industry, determination, penalty.**

100.800. If the board determines that an eligible industry, which has received a credit pursuant to sections 100.700 to 100.850, is not complying with the requirements of the credit agreement or all of the provisions of sections 100.700 to 100.850, the board shall, after giving the industry an opportunity to explain the noncompliance, notify the department of revenue of the noncompliance and request a penalty. The board shall state the amount of the penalty, which may not exceed the sum of any previously allowed assessments pursuant to sections 100.700 to 100.850.

(L. 1996 H.B. 1237 § 17)

### **Evaluation of program.**

100.810. On an annual basis, the director shall provide for an evaluation of the program. The evaluation shall include an assessment of the effectiveness of the program in creating new jobs in Missouri and of the revenue impact of the program. The director shall submit a report on the evaluation to the governor, the president pro tem of the senate, and the speaker of the house of representatives.

(L. 1996 H.B. 1237 § 18)

### **Program costs, how paid, assessments.**

100.820. An agreement between the board and an eligible industry shall provide that all or part of program costs are to be met by receipt of assessments. Assessments shall be based upon wages paid to

eligible employees. If business or employment conditions cause the amount of the assessment to be less than the amount projected in the agreement for any time period, then the employer shall pay to the board the amount of such difference, then a portion of withholding tax paid by the employer pursuant to sections 143.191 to 143.265, RSMo, may be credited to the board by the amount of such difference. The employer shall remit the amount of the assessment to the board. When all program costs, including the principal of, premium, if any, and interest on the certificates have been paid, the employer credits shall cease.

(L. 1996 H.B. 1237 § 19)

### **Special fund, purposes--certification by employer.**

100.830. 1. The board shall establish a special fund for and in the name of each project. All received by the board in respect of the project and required by the agreement to be used to pay program costs for the project shall be deposited in the special fund. Amounts held in the special fund may be used and disbursed by the board only to pay program costs for the project.

2. Any disbursement in respect of a project pursuant to the provisions of sections 100.700 to 100.850, and the special fund into which it is paid, may be irrevocably pledged by the board for the payment of the principal of, premium, if any, and interest on the certificate issued by the board to finance or refinance, in whole or in part, the project.

3. The employer shall certify to the department of revenue that the assessment is in accordance with an agreement and shall provide other information the department may require.

4. If an agreement provides that all or part of program costs are to be met by receipt of assessments, the provisions of this section shall also apply to any successor to the original employer until such time as the principal and interest on the certificates have been paid.

(L. 1996 H.B. 1237 § 20)

### **Board, powers to borrow money--issue and sell certificates--sale or exchange of refunding certificates--certificates not indebtedness of state.**

100.840. 1. To provide funds for the present payment of the costs of economic development projects, the board may borrow money and issue and sell certificates payable from a sufficient portion of the future receipts of payments authorized by the agreement. The receipts shall be pledged to the payment of principal of and interest on the certificates. Certificates may be sold at public sale or at private sale at par, premium, or discount of not less than ninety-five percent of the par value thereof, at the discretion of the board, and may bear interest at such rate or rates as the board shall determine, notwithstanding the provisions of section 108.170, RSMo, to the contrary. Certificates may be issued with respect to a single project or multiple projects and may contain terms or conditions as the board may provide by resolution authorizing the issuance of the certificates.

2. Certificates issued to refund other certificates may be sold at public sale or at private sale as provided in this section with the proceeds from the sale to be used for the payment of the certificates being refunded. The refunding certificates may be exchanged in payment and discharge of the certificates being refunded, in installments at different times or an entire issue or series at one time. Refunding certificates may be

sold or exchanged at any time on, before, or after the maturity of the outstanding certificates to be refunded. Certificates may be issued for the purpose of refunding a like, greater or lesser principal amount of certificates and may bear a higher, lower or equivalent rate of interest than the certificates being renewed or refunded.

3. The board shall determine if revenues provided in the agreement are sufficient to secure the faithful performance of obligations in the agreement.

4. Certificates issued pursuant to this section shall not be deemed to be an indebtedness of the state or the board or of any political subdivision of the state.

(L. 1996 H.B. 1237 § 21, A.L. 1997 2d Ex. Sess. S.B. 1, A.L. 2003 H.B. 289 and S.B. 620)

Effective 6-18-03 (S.B. 620)

7-07-03 (H.B. 289)

Contingent expiration date, see § 135.284

**Assessments remittal, job development assessment fee--company records available to board, when--when remitted assessment ceases--tax credit amount, cap, claiming credit--refunds.**

100.850. 1. The approved company shall remit to the board a job development assessment fee, not to exceed five percent of the gross wages of each eligible employee whose job was created as a result of the economic development project, or not to exceed ten percent if the economic development project is located within a distressed community as defined in section 135.530, RSMo, for the purpose of retiring bonds which fund the economic development project.

2. Any approved company remitting an assessment as provided in subsection 1 of this section shall make its payroll books and records available to the board at such reasonable times as the board shall request and shall file with the board documentation respecting the assessment as the board may require.

3. Any assessment remitted pursuant to subsection 1 of this section shall cease on the date the bonds are retired.

4. Any approved company which has paid an assessment for debt reduction shall be allowed a tax credit equal to the amount of the assessment. The tax credit may be claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, except withholding taxes imposed under the provisions of sections 143.191 to 143.265, RSMo, which were incurred during the tax period in which the assessment was made.

5. In no event shall the aggregate amount of tax credits authorized by subsection 4 of this section exceed twenty-five million dollars annually. Of such amount, nine hundred fifty thousand dollars shall be reserved for an approved project for a world headquarters of a business whose primary function is tax return preparation that is located in any home rule city with more than four hundred thousand inhabitants and located in more than one county, which amount reserved shall end in the year of the final maturity of the certificates issued for such approved project.

6. The director of revenue shall issue a refund to the approved company to the extent that the amount of credits allowed in subsection 4 of this section exceeds the amount of the approved company's income tax.

(L. 1996 H.B. 1237 § 22, A.L. 1998 H.B. 1656, A.L. 2003 H.B. 289 and S.B. 620, A.L. 2004 H.B. 1182 and S.B. 1155 and S.B. 1394, A.L. 2005 S.B. 343, A.L. 2009 H.B. 191)

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