

FIRST REGULAR SESSION

# HOUSE BILL NO. 575

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DIEHL (Sponsor) AND FLOOK (Co-sponsor).

1684L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 100.710, 100.720, 100.750, 100.760, and 100.770, RSMo, and to enact in lieu thereof five new sections relating to business use incentives for large-scale development.

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

Section A. Sections 100.710, 100.720, 100.750, 100.760, and 100.770, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 100.710, 100.720,  
3 100.750, 100.760, and 100.770, to read as follows:

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

- 2 (1) "Assessment", an amount of up to five percent of the gross wages paid in one year  
3 by an eligible industry to all eligible employees in new jobs, or up to ten percent if the economic  
4 development project is located within a distressed community as defined in section 135.530,  
5 RSMo;
- 6 (2) "Board", the Missouri development finance board as created by section 100.265;
- 7 (3) "Certificates", the revenue bonds or notes authorized to be issued by the board  
8 pursuant to section 100.840;
- 9 (4) "Credit", the amount agreed to between the board and an eligible industry, but not  
10 to exceed the assessment attributable to the eligible industry's project;
- 11 (5) "Department", the Missouri department of economic development;
- 12 (6) "Director", the director of the department of economic development;
- 13 (7) "Economic development project":
  - 14 (a) The acquisition of any real property by the board, the eligible industry, or its affiliate;
  - 15 or
  - 16 (b) The fee ownership of real property by the eligible industry or its affiliate; and

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

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

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

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

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

53 (b) Create a minimum of one hundred new jobs for eligible employees at the economic  
54 development project or a minimum of [five] **three** hundred **fifty** jobs if the economic  
55 development project is an office industry or a minimum of two hundred new jobs if the economic  
56 development project is an office industry located within a distressed community as defined in  
57 section 135.530, RSMo, or in the case of an approved company for a project for a world  
58 headquarters of a business whose primary function is tax return preparation in any home rule city  
59 with more than four hundred thousand inhabitants and located in more than one county, create  
60 a minimum of one hundred new jobs for eligible employees at the economic development  
61 project. An industry that meets the definition of "essential industry" may be considered an  
62 eligible industry for the purposes of the program authorized by sections 100.700 to 100.850.  
63 Notwithstanding the preceding provisions of this subdivision, a development agency, as such  
64 term is defined in subdivision (3) of section 100.255, or a corporation, limited liability company,  
65 or partnership formed on behalf of a development agency, at the option of the board, may be  
66 authorized to act as an eligible industry with such obligations and rights otherwise applicable to  
67 an eligible industry, including the rights of an approved company under section 100.850, so long  
68 as the eligible industry otherwise meets the requirements imposed by this subsection;

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

71 (a) Be a targeted industry;

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

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

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

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

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

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

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

99 (a) Obligations incurred for labor and obligations incurred to contractors, subcontractors,  
100 builders and materialmen in connection with the acquisition, construction, installation or  
101 equipping of an economic development project;

102 (b) The cost of acquiring land or rights in land and any cost incidental thereto, including  
103 recording fees;

104 (c) The cost of contract bonds and of insurance of all kinds that may be required or  
105 necessary during the course of acquisition, construction, installation or equipping of an economic  
106 development project which is not paid by the contractor or contractors or otherwise provided for;

107 (d) All costs of architectural and engineering services, including test borings, surveys,  
108 estimates, plans and specifications, preliminary investigations and supervision of construction,  
109 as well as the costs for the performance of all the duties required by or consequent upon the  
110 acquisition, construction, installation or equipping of an economic development project;

111 (e) All costs which are required to be paid under the terms of any contract or contracts  
112 for the acquisition, construction, installation or equipping of an economic development project;  
113 and

114 (f) All other costs of a nature comparable to those described in this subdivision;

115 (14) "Program services", administrative expenses of the board, including contracted  
116 professional services, and the cost of issuance of certificates;

117 (15) "Targeted industry", an industry or one of a cluster of industries that is identified  
118 by the department as critical to the state's economic security and growth and affirmed as such by  
119 the joint committee on economic development policy and planning established in section  
120 620.602, RSMo.

100.720. 1. The Missouri development finance board shall have, in addition to the  
2 powers provided to it in sections 100.250 to 100.297, and with the approval of the department,

3 all the powers necessary to carry out and effectuate the purposes and provisions of sections  
4 100.700 to 100.850, including, but not limited to, the power to:

5 (1) Provide and finance economic development projects, pursuant to the provisions of  
6 sections 100.700 to 100.850, and cooperate with eligible industries in order to promote, foster  
7 and support economic development within the state;

8 (2) Conduct hearings and inquiries, in the manner and by the methods as it deems  
9 desirable, for the purpose of gathering information with respect to eligible industries and  
10 economic development projects, and for the purpose of making any determinations necessary or  
11 desirable in the furtherance of sections 100.700 to 100.850; [and]

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

18 (4) **In the event that market or economic conditions are such that the eligible**  
19 **industry is unable to perform the requirements of sections 100.700 to 100.850, temporarily**  
20 **suspend or waive such requirements until market or economic conditions improve, so long**  
21 **as the eligible industry has not caused such adverse conditions.**

22 2. Certificates issued by the board pursuant to the provisions of sections 100.700 to  
23 100.850 shall not constitute an indebtedness or liability of the state of Missouri within the  
24 meaning of any state constitutional provision or statutory limitation, shall not constitute a pledge  
25 of the faith and credit of the state of Missouri, shall not be guaranteed by the credit of the state,  
26 and unless approved by a concurrent resolution of the general assembly, no certificate in default  
27 shall be paid by the state of Missouri.

100.750. The financing agreement shall provide in substance that:

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

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

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

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

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

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

13 (e) **If adverse market or economic conditions develop during the financing period,**  
14 **temporarily suspend or waive any of the requirements of sections 100.700 to 100.850 until**  
15 **market or economic conditions improve, so long as the eligible industry has not caused**  
16 **such adverse conditions; and**

17 (f) Pursue any other applicable legal remedy.

100.760. After receipt of an application, the board may, with the approval of the  
2 department, enter into an agreement with an eligible industry for a credit pursuant to sections  
3 100.700 to 100.850 if the board determines that all of the following conditions exist:

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

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

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

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

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

14 (4) Receiving the credit is a major factor in the applicant's decision to go forward with  
15 the project and not receiving the credit will result in the applicant not creating new jobs in  
16 Missouri; **and**

17 (5) Awarding the credit will result in an overall positive fiscal impact to the state[;

18 (6) There is at least one other state that the applicant verifies is being considered for the  
19 project; and

20 (7) A significant disparity is identified, using best available data in the projected costs  
21 for the applicant's project compared to the costs in the competing state, including the impact of  
22 the competing state's incentive programs. The competing state's incentive program shall include  
23 state, local, private and federal funds].

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

3 (1) The economy of the county where the projected investment is to occur;

4 (2) The potential impact on the economy of Missouri;

5 (3) The payroll attributable to the project;

6 (4) The capital investment attributable to the project;

7 (5) The amount the average wage paid by the applicant exceeds the average wage paid  
8 within the county in which the project will be located;

9 (6) The costs to Missouri and the affected political subdivisions with respect to the  
10 project; **and**

11 (7) The financial assistance that is otherwise provided by Missouri and the affected  
12 political subdivisions[; and

13 (8) The magnitude of the cost differential between Missouri and the competing state].

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