

HB 191 -- Investment Incentives

Sponsor: Torpey

This bill changes the laws regarding the Missouri New Markets Development Program and establishes the Missouri Angel Investment Incentive Act.

The bill repeals the requirement that no qualified equity investments for the Missouri New Markets Development Program can be permitted unless the General Assembly adopts a concurrent resolution granting authority to the Department of Economic Development to approve qualified equity investments and clearly describing the amount of tax credits available for the next fiscal year.

The Missouri Angel Investment Incentive Act is established and is to be administered by the regional Missouri Small Business and Technology Development Center (SBTDC) and the SBTDC home office. The primary goal of the act is to encourage individuals to provide seed-capital financing for emerging Missouri businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services. Each regional SBTDC must establish a regional committee of at least three but no more than five people to review applications from businesses requesting designation as a qualified Missouri business and allocate and issue tax credits to qualified investors who make cash investments in the qualified Missouri business. The coordinator must establish its own rules of procedure, including the form and substance of applications to be used by each regional SBTDC and the criteria to be considered by each regional SBTDC when evaluating a qualified Missouri business.

A tax credit must be allowed for an investor's cash investment in the qualified securities of a qualified Missouri business. The credit must be in a total amount equal to 50% of the investor's cash investment in any qualified Missouri business. This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit can be allowed in a year prior to 2013. If the amount by which that portion of the credit allowed exceeds the investor's liability in any one taxable year, beginning in 2013, the remaining portion of the credit may be carried forward until the total amount of the credit is used. If the investor is a permitted entity investor, the credit must be claimed by the owners of the permitted entity investor in proportion to their cash investment in the permitted entity investor. The maximum tax credit allowed is \$50,000 for a single qualified Missouri business or a total of \$250,000 in tax credits for a single year per investor who is a natural person or owner of

a permitted entity investor. No tax credits can be allowed for any cash investments in qualified securities for any year beginning after December 31, 2023. The total amount of tax credits that can be allowed cannot exceed \$6 million during any tax year. The balance of unissued tax credits may be carried over for issuance in future years until December 31, 2023.

The tax credits must be administered by the regional SBTDCs. At the beginning of each year, the coordinator must equally designate the tax credits available during that year to each regional SBTDC. At the beginning of each calendar quarter, the coordinator must allocate to each regional SBTDC one-fourth of the total tax credits designated to the regional SBTDC for the year so that the regional SBTDC can allocate tax credits to qualified Missouri businesses and issue tax credits to qualified investors for cash investments in the qualified Missouri businesses during that quarter.

At the end of each calendar quarter, each regional SBTDC must report to the coordinator any unallocated tax credits for the preceding quarter. The coordinator must aggregate all the tax credits and reallocate them equally among the regional SBTDCs as soon as possible during the next consecutive calendar quarter. Each regional SBTDC must receive the reallocation in addition to the new allocation of designated tax credits for the quarter. During the fourth calendar quarter, a regional SBTDC may request that another regional SBTDC with unallocated tax credits permit the unallocated tax credits to be allocated by the requesting SBTDC. No regional SBTDC can be required to grant the request. When a granting SBTDC transfers the allocation of the unallocated tax credits to a requesting SBTDC, the granting SBTDC must provide to the requesting SBTDC a written confirmation authorizing the transfer. The granting and the requesting SBTDC must include a copy of the written confirmation in its reports.

Before an investor may be entitled to receive tax credits, the investor must have made a cash investment in a qualified security of a qualified Missouri business. The business must have been approved by a regional SBTDC as a qualified Missouri business before the date on which the cash investment was made. To be designated as a qualified Missouri business, a business must make application to a regional SBTDC that includes specified information.

The designation of a business as a qualified Missouri business must be made by the regional SBTDC and must be renewed annually. A business must be so designated if the regional SBTDC determines specified criteria as established by the coordinator. A business may be considered as a qualified Missouri business under the provisions of the bill if it falls within a standard industrial

classification code established by the coordinator. A qualified Missouri business must have the burden of proof to demonstrate to the regional SBTDC the qualifications of the business.

Each regional SBTDC is authorized to allocate tax credits to qualified Missouri businesses and then to issue tax credits to qualified investors in those qualified Missouri businesses. The tax credits must be awarded to those qualified Missouri businesses which, as determined by the regional SBTDC, are most likely to provide the greatest economic benefit to the region, the state, or both. The regional SBTDC may allocate and issue whole or partial tax credits based on an assessment of the qualified Missouri business. The regional SBTDC may consider numerous factors in the assessment including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model, and the quality and reasonableness of financial projections for the business.

Each qualified Missouri business for which a regional SBTDC has authorized the issuance of tax credits to the qualified investors of the qualified Missouri business must submit to the regional SBTDC a report before the tax credits are issued that includes specified information.

The State of Missouri cannot be held liable for any damages to any investor that makes an investment in any qualified security of a qualified Missouri business, any business that applies to be designated as a qualified Missouri business and is turned down, or any investor that makes an investment in a business that applies to be designated as a qualified Missouri business and is turned down.

Each qualified Missouri business must notify in a timely manner the regional SBTDC that issued the tax credits of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

The coordinator must provide specified information to the Department of Revenue on an annual basis. The coordinator must conduct an annual review of the activities to ensure that tax credits issued under these provisions are issued in compliance with the bill or rules and regulations promulgated by each regional SBTDC or the coordinator. If the coordinator determines that a business is not in substantial compliance to maintain its designation, the coordinator, by written notice, may inform the business that it will lose its designation as a qualified Missouri business 120 days from the date of mailing the notice unless the business corrects the deficiencies and is once again in compliance

with the requirements for designation. After the 120-day period, if the qualified Missouri business is still not in compliance, the coordinator may send a notice of loss of designation to the business, each regional SBTDC, the secretary of the Department of Revenue, and to all known investors in the business. A business may lose its designation as a qualified Missouri business by moving its operations outside Missouri within 10 years after receiving financial assistance under the bill. In the event that a business loses its designation as a qualified Missouri business, it will be precluded from being issued any additional tax credits with respect to the business, must be precluded from being approved as a qualified Missouri business, and must repay any financial assistance to the regional SBTDC in an amount to be determined by the regional SBTDC. Each qualified Missouri business that loses its designation must enter into a repayment agreement with the regional SBTDC specifying the terms of the repayment obligation.

Investors in a qualified Missouri business must be entitled to keep all of the tax credits properly issued to the investors under these provisions.

The portions of documents and other materials submitted to any regional SBTDC or the coordinator that contain trade secrets must be kept confidential and must be maintained in a secured environment by the regional SBTDC and the coordinator.

Any qualified investor who makes a cash investment in a qualified security of a qualified Missouri business may transfer the tax credits to any natural person. Only the full credit for any one investment must be transferred and this interest must only be transferred one time. Documentation of any tax credit transfer must be provided by the qualified investor in the manner required by the coordinator.

Each qualified Missouri business for which tax credits have been issued must report specified information to the applicable regional SBTDC on an annual basis, on or before February 1.

Any violation of the reporting requirements may be grounds for the loss of designation of the qualified Missouri business, and the business must be subject to the specified restrictions.

The provisions of the bill expire December 31, 2023.