

HCS SB 112 -- TAXATION

SPONSOR: Rupp (Gosen)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on General Laws by a vote of 13 to 0.

This substitute changes the laws regarding taxation.

TECHNOLOGY BUSINESS FACILITIES AND DATA STORAGE CENTERS (Sections 67.2050 and 144.810, RSMo)

Beginning August 28, 2013, the substitute authorizes a state and local sales and use tax exemption on items related to new data storage centers, limited to the net fiscal benefit of the state calculated over a 10-year period on:

- (1) All electrical energy, gas, water, and other utilities including telecommunications and Internet services used in a new data storage center;
- (2) All machinery, equipment, and computers used in any new center; and
- (3) All retail sales of tangible personal property and materials for the purposes of constructing a new data storage center.

Any new data storage center facility project seeking a tax exemption must submit a notice of intent and a project plan to the Department of Economic Development that identifies each known constructing and operating taxpayer for the project and any additional information that the department may require. The department must determine whether the project is eligible for the exemption by verifying that a new facility will invest at least \$5 million within 12 consecutive months and results in the creation of at least five new jobs during a period of up to 12 consecutive months from the date of condition approval. The department must make a conditional determination within 30 days of submission by the operating taxpayer. Failure of the department to respond within the 30 days must result in a project plan being deemed conditionally approved.

Upon approval by the department, project taxpayers for expanding data center projects may, beginning August 28, 2013, and for a period of up to 10 years, be exempted from state and local sales and use taxes on:

- (1) All electrical energy, gas, water, and other utilities including telecommunication and Internet services that, on an

annual basis, exceed the amount used in the existing or the replaced facility prior to the expansion;

(2) All machinery, equipment, and computers used in any expanding center; and

(3) All retail sales of tangible personal property and materials for the purpose of constructing, repairing, or remodeling an expanding data storage center.

Any expanding data storage center wishing to utilize these exemptions must submit a notice of intent and a project plan to the department that identifies each known constructing and operating taxpayer and any additional information that the department may reasonably require to determine eligibility for the exemption. The department must determine whether the project is eligible for exemption by verifying that an expanding facility will invest at least \$1 million within 12 consecutive months. The department must make a conditional determination within 30 days of submission by the operating taxpayer. Failure of the department to respond within 30 days will result in a project plan being deemed conditionally approved. The departments of Economic Development and Revenue must conduct random audits to ensure that the intent of these provisions is followed. No recipient of an exemption can be eligible for benefits under any business recruitment tax credit under Section 135.800.

DISTRESSED AREAS LAND ASSEMBLAGE TAX CREDIT ACT (Section 99.1205)

The substitute changes the laws regarding the Distressed Areas Land Assemblage Tax Credit Act. The substitute revises the definition of "acquisition costs" to include engineering, surveying, title insurance, and architectural and design costs incurred in connection with the acquisition, financing, parcel consolidation, or site and redevelopment area planning regarding one or more eligible parcels. Acquisition costs include maintenance costs for a period of 12 years, instead of the current five years, but cannot include costs for title insurance and survey.

The substitute revises the definition of "eligible parcel" to exclude any parcel acquired by the applicant from a municipal authority prior to August 28, 2007.

The definition of an "eligible project area" is revised to include a redevelopment area as defined under the Real Property Tax Increment Allocation Redevelopment Act that contains at least 300 acres in 80 or more parcels, includes or previously included more than 1 million square feet of commercial building space, and is located within a low-income community as defined in 26 U.S.C.

Section 45D as of January 1, 2011. An applicant is required to own at least 50 acres of eligible parcels within an eligible project area, excluding any parcels acquired from a municipal authority. The applicant must own at least 150 contiguous acres of real property, which may be separated by the width of public right-of-way, within the urban renewal area or redevelopment area containing the eligible project area.

The substitute revises the definition of "interest costs" to exclude attorney fees that relate to or arise out of loans relating to acquisition costs including without limitation, interest, loan fees, and closing costs associated with the refinancing of loans relating to acquisition costs.

An applicant is allowed to receive a tax credit for the acquisition and interest costs of an eligible parcel for 12 years instead of the current five years. Currently, an applicant can receive a tax credit for 50% of reasonable demolition costs. The substitute increases the amount of the tax credit to 100% of the reasonable demolition costs. An applicant is allowed to file for the tax credit quarterly instead of annually and must submit quarterly reports on its progress and compliance with its deadlines. The annual amount of tax credits that can be issued is increased from \$20 million to \$30 million, and the aggregate program cap authorized after August 28, 2013, is \$95 million. The substitute establishes a process for allocating the annual \$30 million in tax credits depending upon the number of eligible applicants. No single applicant can receive more than 50% of the annual \$30 million tax credits. No credits can be authorized after August 28, 2019. Currently, no credits can be authorized after August 28, 2013. The old state penitentiary in Jefferson City is eligible for credits under this section and at least 70% of the land used for the prison must be sold by the state by December 31, 2014.

NEW MARKETS TAX CREDIT (Section 135.680)

The Missouri's New Markets program authorizes a tax credit against state income taxes, bank taxes, insurance premium taxes, other financial institutions taxes, and express companies taxes by investors in funds established by specialized financial institutions called Community Development Entities (CDEs) for projects in Missouri.

The substitute 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 substitute revises the definitions of specified terms of the New Markets tax credit program for investments made after the effective date of the act. Currently, a taxpayer can receive 39% of the amount he or she invested in the CDE over a seven-year period as follows: 0% for the first two years, 7% for the third year, and 8% for the next four years. The substitute changes the amount of the tax credit to 58% of the unadjusted amount invested in the CDE to be claimed over a seven-year period as follows: 0% for the first two years, 11% for the third and fourth years, and 12% for the next three years. The tax credits can be transferred, but cannot be sold on the open market. The substitute reduces the cap on the tax credit from \$25 million to \$15 million annually.

The department is required to recapture the tax credit if the federal tax credit that is available to a qualified equity investment is recaptured, the issuer redeems a qualified equity investment prior to the seventeenth anniversary of its issuance, the issuer fails to invest 85% of the purchase price of the qualified equity investment in low-income community investments in Missouri within 12 months of issuance and until the last credit allowance date for the investment, or if the issuer uses the cash proceeds of the qualified equity investment to make low-income community investments in excess of 25% of the cash proceeds. The department is required to give the CDE six months after the notice of noncompliance before any tax credits can be recaptured. The issuer will not be required to reinvest the capital returned from a qualified investment after the sixth anniversary of the issuance if the proceeds were invested in a qualified low-income community or the date a community development entity has made an investment in a low-income community equal to 150% of the proceeds from the investment, whichever occurs first.

The substitute creates the New Markets Performance Guarantee Fund and requires CDEs seeking eligibility for the tax credit to pay .5% of the investment to the department as a deposit that will be refunded if the CDE invests 85% of the purchase price of the investment in qualified low-income community investments in Missouri within 12 months of issuance.

The substitute also prohibits CDEs from distributing to its equity holders or making cash payments on long-term debt securities until the investment meets specified requirements and the department approves the request. If the department denies the request unreasonably, the burden of proof is on the department in any administrative or legal proceeding. Fees from the investment fund are prohibited from being paid to a CDE until after the seventh anniversary of issuance.

MISSOURI ANGEL INVESTMENT INCENTIVE ACT (Sections 348.273 and 348.274)

The substitute establishes the Missouri Angel Investment Incentive Act to be administered by the Missouri Technology Corporation (MTC) and the Department of Economic Development. 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. The MTC must review applications from businesses requesting designation as a qualified Missouri business for the allocation of the tax credits. The department must establish the rules of procedure, including the form and substance of applications to be used by the MTC and the criteria to be considered when evaluating a qualified Missouri business. The department will issue tax credits to qualified investors making cash investments in qualified Missouri businesses that have been allocated tax credits by the MTC.

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 until January 1, 2014. If the amount by which that portion of the credit allowed exceeds the investor's liability in any one taxable year, the remaining portion of the credit may be carried forward five years or until the total amount of the credit is used, whichever occurs first. If the investor is a permitted entity investor, the credit must be claimed by the owners of the permitted entity investor in proportion to its equity 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 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, 2019. The total amount of tax credits that can be allocated cannot exceed \$6 million per year.

At the beginning of each year, the department must equally designate the tax credits available during that year for investments made in companies within each congressional district of the state. At the beginning of each calendar quarter, the department must allocate to each congressional district one-fourth of the total tax credits designated to the district for the year so the MTC can allocate tax credits among qualified Missouri businesses within that district. The department can then issue tax

credits to qualified investors for cash investments in a qualified Missouri business during that quarter.

At the end of each calendar quarter, the MTC must report to the department any unallocated tax credits for the preceding quarter for each congressional district. The department must aggregate all the tax credits and reallocate them equally among the districts during the next consecutive calendar quarter. Each district must receive the reallocation in addition to the new allocation of designated tax credits for the quarter. During the fourth calendar quarter, a district may receive unallocated tax credits to the extent the credits are available. When the MTC transfers unallocated tax credits to another district, the MTC must provide a written confirmation authorizing the transfer to the department.

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 be approved by the MTC 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 the MTC that includes specified information.

The designation of a business as a qualified Missouri business must be made by the MTC and must be renewed annually. A business must be so designated if the MTC determines specified criteria as established by the department. A business may be considered a qualified Missouri business if it falls within a standard industrial classification code established by the department. A qualified Missouri business must have the burden of proof to demonstrate to the MTC the qualifications of the business.

The MTC is authorized to allocate tax credits to qualified Missouri businesses, and the department is authorized to issue tax credits to qualified investors in those qualified Missouri businesses. The tax credits must be allocated to those qualified Missouri businesses that, as determined by the MTC, are most likely to provide the greatest economic benefit to the region, the state, or both. The MTC may allocate and the department may issue whole or partial tax credits based on the MTC's assessment of the qualified Missouri business. The MTC 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 the MTC has allocated

tax credits must submit to the MTC 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 MTC and the department 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 department must provide specified information to the Department of Revenue on an annual basis. The department must conduct an annual review of the activities to ensure that tax credits issued under these provisions are issued in compliance with the substitute or rules and regulations established by the MTC or the department. If the department determines that a business is not in substantial compliance to maintain its designation, the department, by written notice, must 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 120 days, if the qualified Missouri business is still not in substantial compliance, the department must send a notice of loss of designation to the business, the MTC, the Director of the Department of Revenue, and to all known investors in the business. A business will lose its designation as a qualified Missouri business by moving its operations outside Missouri within 10 years after receiving financial assistance under the provisions of the substitute. 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 MTC in an amount to be determined by the MTC. Each qualified Missouri business that loses its designation must enter into a repayment agreement with the MTC 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 the MTC or the department that contain trade secrets must be kept confidential and must be maintained in a secured environment by the MTC and the department. 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 department.

Each qualified Missouri business for which tax credits have been issued must report specified information to the MTC on an annual basis, on or before February 1. The department must also report annually, on or before April 1, to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives specified information on the allocation and issuance of the tax credits.

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.

TAX CREDITS FOR QUALIFIED RESEARCH EXPENSES (Section 620.1039)

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

Qualified research expenses will be limited to those incurred in the research and development of agricultural biotechnology, plant genomics products, diagnostic and therapeutic medical devices, or prescription pharmaceuticals consumed by animals. Expenses incurred in the research, development, or manufacture of power system technology for aerospace, space, defense, or implantable or wearable medical devices are also permitted.

The department director may allow a taxpayer to transfer up to 40% of the tax credits issued, but not yet claimed, between January 1, 2014, and December 31, 2020. The department director must act between August 1 and August 15 on tax credit applications filed between January 1 and July 1 for claims from the previous year. The formula is specified by which tax credits will be issued if the eligible claims for the credits exceed the annual cap. No one taxpayer can be issued more than 30% of the total amount of tax credits authorized in any calendar year.

The provisions of the substitute regarding technology business facilities and data storage centers will expire on September 1, 2019.

The substitute contains an emergency clause for the provisions regarding the New Market Tax Credit program and will expire six years after the effective date.

PROPOSERS: Supporters say that the New Market Tax Credit program has been successful since its creation in 2007, and the bill will provide private equity capital for the state's businesses to expand and grow. Since 2007, when these provisions were put into place, over 7,000 jobs have been created, which is a large number despite the economic recession. The program has proven its success over the past six years.

Testifying for the bill were Senator Rupp; Advantage Capital Partners; Missouri Chamber of Commerce and Industry; and St. Louis Regional Chamber Growth Association.

OPPOSERS: Those who oppose the bill say that they are against the 15% limitation contained in the version of the bill from the Senate.

Testifying against the bill was Missouri Association of Realtors.