

Shields

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SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2393

AN ACT

To repeal sections 135.950 and 135.967, RSMo, and to enact in lieu thereof three new sections relating to enhanced enterprise zones.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 135.950 and 135.967, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as  
3 sections 135.950, 135.967, and 135.968, to read as follows:

4 135.950. The following terms, whenever used in sections  
5 135.950 to 135.970 mean:

6 (1) "Average wage", the new payroll divided by the number  
7 of new jobs;

8 [(1)] (2) "Blighted area", an area which, by reason of the  
9 predominance of defective or inadequate street layout, unsanitary  
10 or unsafe conditions, deterioration of site improvements,  
11 improper subdivision or obsolete platting, or the existence of  
12 conditions which endanger life or property by fire and other  
13 causes, or any combination of such factors, retards the provision  
14 of housing accommodations or constitutes an economic or social

1 liability or a menace to the public health, safety, morals, or  
2 welfare in its present condition and use;

3 [(2)] (3) "Board", an enhanced enterprise zone board  
4 established pursuant to section 135.957;

5 [(3)] (4) "Commencement of commercial operations" shall be  
6 deemed to occur during the first taxable year for which the new  
7 business facility is first put into use by the taxpayer in the  
8 enhanced business enterprise in which the taxpayer intends to use  
9 the new business facility;

10 (5) "County average wage", the average wages in each county  
11 as determined by the department for the most recently completed  
12 full calendar year. However, if the computed county average wage  
13 is above the statewide average wage, the statewide average wage  
14 shall be deemed the county average wage for such county for the  
15 purpose of determining eligibility. The department shall publish  
16 the county average wage for each county at least annually.  
17 Notwithstanding the provisions of this subdivision to the  
18 contrary, for any taxpayer that in conjunction with their project  
19 is relocating employees from a Missouri county with a higher  
20 county average wage, such taxpayer shall obtain the endorsement  
21 of the governing body of the community from which jobs are being  
22 relocated or the county average wage for their project shall be  
23 the county average wage for the county from which the employees  
24 are being relocated;

25 [(4)] (6) "Department", the department of economic  
26 development;

27 [(5)] (7) "Director", the director of the department of  
28 economic development;

1 [(6)] (8) "Employee", a person employed by the enhanced  
2 business enterprise that is scheduled to work an average of at  
3 least one thousand hours per year, and such person at all times  
4 has health insurance offered to him or her, which is partially  
5 paid for by the employer;

6 [(7)] (9) "Enhanced business enterprise", an industry or  
7 one of a cluster of industries that is either:

8 (a) Identified by the department as critical to the state's  
9 economic security and growth; or

10 (b) Will have an impact on industry cluster development, as  
11 identified by the governing authority in its application for  
12 designation of an enhanced enterprise zone and approved by the  
13 department; but excluding gambling establishments (NAICS industry  
14 group 7132), retail trade (NAICS sectors 44 and 45), educational  
15 services (NAICS sector 61), religious organizations (NAICS  
16 industry group 8131), public administration (NAICS sector 92),  
17 and food and drinking places (NAICS subsector 722), however,  
18 notwithstanding provisions of this section to the contrary,  
19 headquarters or administrative offices of an otherwise excluded  
20 business may qualify for benefits if the offices serve a  
21 multistate territory. In the event a national, state, or  
22 regional headquarters operation is not the predominant activity  
23 of a project facility, the new jobs and investment of such  
24 headquarters operation is considered eligible for benefits under  
25 this section if the other requirements are satisfied. Service  
26 industries may be eligible only if a majority of its annual  
27 revenues will be derived from out of the state;

28 [(8)] (10) "Existing business facility", any facility in

1 this state which was employed by the taxpayer claiming the credit  
2 in the operation of an enhanced business enterprise immediately  
3 prior to an expansion, acquisition, addition, or replacement;

4 [(9)] (11) "Facility", any building used as an enhanced  
5 business enterprise located within an enhanced enterprise zone,  
6 including the land on which the facility is located and all  
7 machinery, equipment, and other real and depreciable tangible  
8 personal property acquired for use at and located at or within  
9 such facility and used in connection with the operation of such  
10 facility;

11 [(10)] (12) "Facility base employment", the greater of the  
12 number of employees located at the facility on the date of the  
13 notice of intent, or for the twelve-month period prior to the  
14 date of the notice of intent, the average number of employees  
15 located at the facility, or in the event the project facility has  
16 not been in operation for a full twelve-month period, the average  
17 number of employees for the number of months the facility has  
18 been in operation prior to the date of the notice of intent;

19 [(11)] (13) "Facility base payroll", the total amount of  
20 taxable wages paid by the enhanced business enterprise to  
21 employees of the enhanced business enterprise located at the  
22 facility in the twelve months prior to the notice of intent, not  
23 including the payroll of owners of the enhanced business  
24 enterprise unless the enhanced business enterprise is  
25 participating in an employee stock ownership plan. For the  
26 purposes of calculating the benefits under this program, the  
27 amount of base payroll shall increase each year based on the  
28 consumer price index or other comparable measure, as determined

1 by the department;

2 [(12)] (14) "Governing authority", the body holding primary  
3 legislative authority over a county or incorporated municipality;

4 [(13)] (15) "Mega-project", any manufacturing or assembling  
5 facility, approved by the department for construction and  
6 operation within an enhanced enterprise zone, which satisfies the  
7 following:

8 (a) The new capital investment is projected to exceed three  
9 hundred million dollars over a period of eight years from the  
10 date of approval by the department;

11 (b) The number of new jobs is projected to exceed one  
12 thousand over a period of eight years beginning on the date of  
13 approval by the department;

14 (c) The average wage of new jobs to be created shall exceed  
15 the county average wage;

16 (d) The taxpayer shall offer health insurance to all new  
17 jobs and pay at least eighty percent of such insurance premiums;  
18 and

19 (e) An acceptable plan of repayment, to the state, of the  
20 tax credits provided for the mega-project has been provided by  
21 the taxpayer;

22 (16) "NAICS", the 1997 edition of the North American  
23 Industry Classification System as prepared by the Executive  
24 Office of the President, Office of Management and Budget. Any  
25 NAICS sector, subsector, industry group or industry identified in  
26 this section shall include its corresponding classification in  
27 subsequent federal industry classification systems;

28 [(14)] (17) "New business facility", a facility that

1 satisfies the following requirements:

2 (a) Such facility is employed by the taxpayer in the  
3 operation of an enhanced business enterprise. Such facility  
4 shall not be considered a new business facility in the hands of  
5 the taxpayer if the taxpayer's only activity with respect to such  
6 facility is to lease it to another person or persons. If the  
7 taxpayer employs only a portion of such facility in the operation  
8 of an enhanced business enterprise, and leases another portion of  
9 such facility to another person or persons or does not otherwise  
10 use such other portions in the operation of an enhanced business  
11 enterprise, the portion employed by the taxpayer in the operation  
12 of an enhanced business enterprise shall be considered a new  
13 business facility, if the requirements of paragraphs (b), (c),  
14 and (d) of this subdivision are satisfied;

15 (b) Such facility is acquired by, or leased to, the  
16 taxpayer after December 31, 2004. A facility shall be deemed to  
17 have been acquired by, or leased to, the taxpayer after December  
18 31, 2004, if the transfer of title to the taxpayer, the transfer  
19 of possession pursuant to a binding contract to transfer title to  
20 the taxpayer, or the commencement of the term of the lease to the  
21 taxpayer occurs after December 31, 2004;

22 (c) If such facility was acquired by the taxpayer from  
23 another taxpayer and such facility was employed immediately prior  
24 to the acquisition by another taxpayer in the operation of an  
25 enhanced business enterprise, the operation of the same or a  
26 substantially similar enhanced business enterprise is not  
27 continued by the taxpayer at such facility; and

28 (d) Such facility is not a replacement business facility,

1 as defined in subdivision [(22)] (25) of this section;

2 [(15)] (18) "New business facility employee", an employee  
3 of the taxpayer in the operation of a new business facility  
4 during the taxable year for which the credit allowed by section  
5 135.967 is claimed, except that truck drivers and rail and barge  
6 vehicle operators and other operators of rolling stock for hire  
7 shall not constitute new business facility employees;

8 [(16)] (19) "New business facility investment", the value  
9 of real and depreciable tangible personal property, acquired by  
10 the taxpayer as part of the new business facility, which is used  
11 by the taxpayer in the operation of the new business facility,  
12 during the taxable year for which the credit allowed by 135.967  
13 is claimed, except that trucks, truck-trailers, truck  
14 semitrailers, rail vehicles, barge vehicles, aircraft and other  
15 rolling stock for hire, track, switches, barges, bridges,  
16 tunnels, and rail yards and spurs shall not constitute new  
17 business facility investments. The total value of such property  
18 during such taxable year shall be:

19 (a) Its original cost if owned by the taxpayer; or

20 (b) Eight times the net annual rental rate, if leased by  
21 the taxpayer. The net annual rental rate shall be the annual  
22 rental rate paid by the taxpayer less any annual rental rate  
23 received by the taxpayer from subrentals. The new business  
24 facility investment shall be determined by dividing by twelve the  
25 sum of the total value of such property on the last business day  
26 of each calendar month of the taxable year. If the new business  
27 facility is in operation for less than an entire taxable year,  
28 the new business facility investment shall be determined by

1 dividing the sum of the total value of such property on the last  
2 business day of each full calendar month during the portion of  
3 such taxable year during which the new business facility was in  
4 operation by the number of full calendar months during such  
5 period;

6 [(17)] (20) "New job", the number of employees located at  
7 the facility that exceeds the facility base employment less any  
8 decrease in the number of the employees at related facilities  
9 below the related facility base employment. No job that was  
10 created prior to the date of the notice of intent shall be deemed  
11 a new job;

12 [(18)] (21) "Notice of intent", a form developed by the  
13 department which is completed by the enhanced business enterprise  
14 and submitted to the department which states the enhanced  
15 business enterprise's intent to hire new jobs and request  
16 benefits under such program;

17 [(19)] (22) "Related facility", a facility operated by the  
18 enhanced business enterprise or a related company in this state  
19 that is directly related to the operation of the project  
20 facility;

21 [(20)] (23) "Related facility base employment", the greater  
22 of:

23 (a) The number of employees located at all related  
24 facilities on the date of the notice of intent; or

25 (b) For the twelve-month period prior to the date of the  
26 notice of intent, the average number of employees located at all  
27 related facilities of the enhanced business enterprise or a  
28 related company located in this state;

1            [(21)] (24) "Related taxpayer":

2            (a) A corporation, partnership, trust, or association  
3 controlled by the taxpayer;

4            (b) An individual, corporation, partnership, trust, or  
5 association in control of the taxpayer; or

6            (c) A corporation, partnership, trust or association  
7 controlled by an individual, corporation, partnership, trust or  
8 association in control of the taxpayer. "Control of a  
9 corporation" shall mean ownership, directly or indirectly, of  
10 stock possessing at least fifty percent of the total combined  
11 voting power of all classes of stock entitled to vote, "control  
12 of a partnership or association" shall mean ownership of at least  
13 fifty percent of the capital or profits interest in such  
14 partnership or association, and "control of a trust" shall mean  
15 ownership, directly or indirectly, of at least fifty percent of  
16 the beneficial interest in the principal or income of such trust;  
17 ownership shall be determined as provided in Section 318 of the  
18 Internal Revenue Code of 1986, as amended;

19           [(22)] (25) "Replacement business facility", a facility  
20 otherwise described in subdivision [(14)] (17) of this section,  
21 hereafter referred to in this subdivision as "new facility",  
22 which replaces another facility, hereafter referred to in this  
23 subdivision as "old facility", located within the state, which  
24 the taxpayer or a related taxpayer previously operated but  
25 discontinued operating on or before the close of the first  
26 taxable year for which the credit allowed by this section is  
27 claimed. A new facility shall be deemed to replace an old  
28 facility if the following conditions are met:

1 (a) The old facility was operated by the taxpayer or a  
2 related taxpayer during the taxpayer's or related taxpayer's  
3 taxable period immediately preceding the taxable year in which  
4 commencement of commercial operations occurs at the new facility;  
5 and

6 (b) The old facility was employed by the taxpayer or a  
7 related taxpayer in the operation of an enhanced business  
8 enterprise and the taxpayer continues the operation of the same  
9 or substantially similar enhanced business enterprise at the new  
10 facility.

11  
12 Notwithstanding the preceding provisions of this subdivision, a  
13 facility shall not be considered a replacement business facility  
14 if the taxpayer's new business facility investment, as computed  
15 in subdivision [(16)] (19) of this section, in the new facility  
16 during the tax period for which the credits allowed in section  
17 135.967 are claimed exceed one million dollars and if the total  
18 number of employees at the new facility exceeds the total number  
19 of employees at the old facility by at least two;

20 [(23)] (26) "Same or substantially similar enhanced  
21 business enterprise", an enhanced business enterprise in which  
22 the nature of the products produced or sold, or activities  
23 conducted, are similar in character and use or are produced,  
24 sold, performed, or conducted in the same or similar manner as in  
25 another enhanced business enterprise.

26 135.967. 1. A taxpayer who establishes a new business  
27 facility may, upon approval by the department, be allowed a  
28 credit, each tax year for up to ten tax years, in an amount

1 determined as set forth in this section, against the tax imposed  
2 by chapter 143, RSMo, excluding withholding tax imposed by  
3 sections 143.191 to 143.265, RSMo. No taxpayer shall receive  
4 multiple ten-year periods for subsequent expansions at the same  
5 facility.

6 2. Notwithstanding any provision of law to the contrary,  
7 any taxpayer who establishes a new business facility in an  
8 enhanced enterprise zone and is awarded state tax credits under  
9 this section may not also receive tax credits under sections  
10 135.100 to 135.150, sections 135.200 to [135.268] 135.286, or  
11 section 135.535, and may not simultaneously receive tax credits  
12 under sections 620.1875 to 620.1890, RSMo, at the same facility.

13 3. No credit shall be issued pursuant to this section  
14 unless:

15 (1) The number of new business facility employees engaged  
16 or maintained in employment at the new business facility for the  
17 taxable year for which the credit is claimed equals or exceeds  
18 two; and

19 (2) The new business facility investment for the taxable  
20 year for which the credit is claimed equals or exceeds one  
21 hundred thousand dollars.

22 4. The annual amount of credits allowed for an approved  
23 enhanced business enterprise shall be the lesser of:

24 (1) The annual amount authorized by the department for the  
25 enhanced business enterprise, which shall be limited to the  
26 projected state economic benefit, as determined by the  
27 department; or

28 (2) The sum calculated based upon the following:

