

FIRST REGULAR SESSION

# HOUSE BILL NO. 1339

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

2721H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal section 620.2020, RSMo, and to enact in lieu thereof one new section relating to tax credits for job creation, with an emergency clause.

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

Section A. Section 620.2020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 620.2020, to read as follows:

620.2020. 1. The department shall respond to a written request, by or on behalf of a qualified company or qualified military project, for a proposed benefit award under the provisions of this program within five business days of receipt of such request. The department shall respond to a written request, by or on behalf of a qualified manufacturing company, for a proposed benefit award under the provisions of this program within fifteen business days of receipt of such request. Such response shall contain either a proposal of benefits for the qualified company or qualified military project, or a written response refusing to provide such a proposal and stating the reasons for such refusal. A qualified company or qualified military project that intends to seek benefits under the program shall submit to the department a notice of intent. The department shall respond within thirty days to a notice of intent with an approval or a rejection, provided that the department may withhold approval or provide a contingent approval until it is satisfied that proper documentation of eligibility has been provided. The department shall certify or reject the qualifying company's plan outlined in their notice of intent as satisfying good faith efforts made to employ, at a minimum, commensurate with the percentage of minority populations in the state of Missouri, as reported in the previous decennial census, the following: racial minorities, contractors who are racial minorities, and contractors that, in turn, employ at a minimum racial minorities commensurate with the percentage of minority populations in the

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.

18 state of Missouri, as reported in the previous decennial census. Failure to respond on behalf of  
19 the department shall result in the notice of intent being deemed approved. A qualified company  
20 receiving approval for program benefits may receive additional benefits for subsequent new jobs  
21 at the same facility after the full initial project period if the applicable minimum job requirements  
22 are met. There shall be no limit on the number of project periods a qualified company may  
23 participate in the program, and a qualified company may elect to file a notice of intent to begin  
24 a new project period concurrent with an existing project period if the applicable minimum job  
25 requirements are achieved, the qualified company provides the department with the required  
26 annual reporting, and the qualified company is in compliance with this program and any other  
27 state programs in which the qualified company is currently or has previously participated.  
28 However, the qualified company shall not receive any further program benefits under the original  
29 approval for any new jobs created after the date of the new notice of intent, and any jobs created  
30 before the new notice of intent shall not be included as new jobs for purposes of the benefit  
31 calculation for the new approval. When a qualified company has filed and received approval of  
32 a notice of intent and subsequently files another notice of intent, the department shall apply the  
33 definition of project facility under subdivision (24) of section 620.2005 to the new notice of  
34 intent as well as all previously approved notices of intent and shall determine the application of  
35 the definitions of new job, new payroll, project facility base employment, and project facility  
36 base payroll accordingly.

37         2. Notwithstanding any provision of law to the contrary, the benefits available to the  
38 qualified company under any other state programs for which the company is eligible and which  
39 utilize withholding tax from the new or retained jobs of the company shall first be credited to the  
40 other state program before the withholding retention level applicable under this program will  
41 begin to accrue. If any qualified company also participates in a job training program utilizing  
42 withholding tax, the company shall retain no withholding tax under this program, but the  
43 department shall issue a refundable tax credit for the full amount of benefit allowed under this  
44 program. The calendar year annual maximum amount of tax credits which may be issued to a  
45 qualifying company that also participates in a job training program shall be increased by an  
46 amount equivalent to the withholding tax retained by that company under a jobs training  
47 program.

48         3. A qualified company or qualified military project receiving benefits under this  
49 program shall provide an annual report of the number of jobs, along with minority jobs created  
50 or retained, and such other information as may be required by the department to document the  
51 basis for program benefits available no later than ninety days prior to the end of the qualified  
52 company's or industrial development authority's tax year immediately following the tax year for  
53 which the benefits provided under the program are attributed. In such annual report, if the

54 average wage is below the applicable percentage of the county average wage, the qualified  
55 company or qualified military project has not maintained the employee insurance as required,  
56 if the department after a review determines the qualifying company fails to satisfy other aspects  
57 of their notice of intent, including failure to make good faith efforts to employ, at a minimum,  
58 commensurate with the percentage of minority populations in the state of Missouri, as reported  
59 in the previous decennial census, the following: racial minorities, contractors who are racial  
60 minorities, and contractors that, in turn, employ at a minimum racial minorities commensurate  
61 with the percentage of minority populations in the state of Missouri, as reported in the previous  
62 decennial census, or if the number of jobs is below the number required, the qualified company  
63 or qualified military project shall not receive tax credits or retain the withholding tax for the  
64 balance of the project period. Failure to timely file the annual report required under this section  
65 ~~shall~~ **may** result in the forfeiture of tax credits attributable to the year for which the reporting  
66 was required and a recapture of withholding taxes retained by the qualified company or qualified  
67 military project during such year.

68         4. The department may withhold the approval of any benefits under this program until  
69 it is satisfied that proper documentation has been provided, and shall reduce the benefits to  
70 reflect any reduction in full-time employees or payroll. Upon approval by the department, the  
71 qualified company may begin the retention of the withholding taxes when it reaches the required  
72 number of jobs and the average wage meets or exceeds the applicable percentage of county  
73 average wage. Tax credits, if any, may be issued upon satisfaction by the department that the  
74 qualified company has exceeded the applicable percentage of county average wage and the  
75 required number of jobs; provided that, tax credits awarded under subsection 7 of section  
76 620.2010 may be issued following the qualified company's acceptance of the department's  
77 proposal and pursuant to the requirements set forth in the written agreement between the  
78 department and the qualified company under subsection 4 of section 620.2010.

79         5. Any qualified company or qualified military project approved for benefits under this  
80 program shall provide to the department, upon request, any and all information and records  
81 reasonably required to monitor compliance with program requirements. This program shall be  
82 considered a business recruitment tax credit under subdivision (4) of subsection 2 of section  
83 135.800, and any qualified company or qualified military project approved for benefits under this  
84 program shall be subject to the provisions of sections 135.800 to 135.830.

85         6. Any taxpayer who is awarded benefits under this program who knowingly hires  
86 individuals who are not allowed to work legally in the United States shall immediately forfeit  
87 such benefits and shall repay the state an amount equal to any state tax credits already redeemed  
88 and any withholding taxes already retained.

89           7. (1) The maximum amount of tax credits that may be authorized under this program  
90 for any fiscal year shall be limited as follows, less the amount of any tax credits previously  
91 obligated for that fiscal year under any of the tax credit programs referenced in subsection 14 of  
92 this section:

93           (a) For the fiscal year beginning on July 1, 2013, but ending on or before June 30, 2014,  
94 no more than one hundred six million dollars in tax credits may be authorized;

95           (b) For the fiscal year beginning on July 1, 2014, but ending on or before June 30, 2015,  
96 no more than one hundred eleven million dollars in tax credits may be authorized;

97           (c) For fiscal years beginning on or after July 1, 2015, but ending on or before June 30,  
98 2020, no more than one hundred sixteen million dollars in tax credits may be authorized for each  
99 fiscal year; and

100           (d) For all fiscal years beginning on or after July 1, 2020, no more than one hundred six  
101 million dollars in tax credits may be authorized for each fiscal year. The provisions of this  
102 paragraph shall not apply to tax credits issued to qualified companies under a notice of intent  
103 filed prior to July 1, 2020.

104           (2) For all fiscal years beginning on or after July 1, 2020, in addition to the amount of  
105 tax credits that may be authorized under paragraph (d) of subdivision (1) of this subsection, an  
106 additional ten million dollars in tax credits may be authorized for each fiscal year for the purpose  
107 of the completion of infrastructure projects directly connected with the creation or retention of  
108 jobs under the provisions of sections 620.2000 to 620.2020 and an additional ten million dollars  
109 in tax credits may be authorized for each fiscal year for a qualified manufacturing company based  
110 on a manufacturing capital investment as set forth in section 620.2010.

111           8. For all fiscal years beginning on or after July 1, 2020, the maximum total amount of  
112 withholding tax that may be authorized for retention for the creation of new jobs under the  
113 provisions of sections 620.2000 to 620.2020 by qualified companies with a project facility base  
114 employment of at least fifty shall not exceed seventy-five million dollars for each fiscal year.  
115 The provisions of this subsection shall not apply to withholding tax authorized for retention for  
116 the creation of new jobs by qualified companies with a project facility base employment of less  
117 than fifty.

118           9. For tax credits for the creation of new jobs under section 620.2010, the department  
119 shall allocate the annual tax credits based on the date of the approval, reserving such tax credits  
120 based on the department's best estimate of new jobs and new payroll of the project, and any other  
121 applicable factors in determining the amount of benefits available to the qualified company or  
122 qualified military project under this program; provided that, the department may reserve up to  
123 twenty-one and one-half percent of the maximum annual amount of tax credits that may be  
124 authorized under subsection 7 of this section for award under subsection 7 of section 620.2010.

125 However, the annual issuance of tax credits shall be subject to annual verification of actual  
126 payroll by the department or, for qualified military projects, annual verification of average salary  
127 for the jobs directly created by the qualified military project. Any authorization of tax credits  
128 shall expire if, within two years from the date of commencement of operations, or approval if  
129 applicable, the qualified company has failed to meet the applicable minimum job requirements.  
130 The qualified company may retain authorized amounts from the withholding tax under the  
131 project once the applicable minimum job requirements have been met for the duration of the  
132 project period. No benefits shall be provided under this program until the qualified company or  
133 qualified military project meets the applicable minimum new job requirements or, for benefits  
134 awarded under subsection 7 of section 620.2010, until the qualified company has satisfied the  
135 requirements set forth in the written agreement between the department and the qualified  
136 company under subsection 4 of section 620.2010. In the event the qualified company or  
137 qualified military project does not meet the applicable minimum new job requirements, the  
138 qualified company or qualified military project may submit a new notice of intent or the  
139 department may provide a new approval for a new project of the qualified company or qualified  
140 military project at the project facility or other facilities.

141 10. Tax credits provided under this program may be claimed against taxes otherwise  
142 imposed by chapters 143 and 148, and may not be carried forward, but shall be claimed within  
143 one year of the close of the taxable year for which they were issued. Tax credits provided under  
144 this program may be transferred, sold, or assigned by filing a notarized endorsement thereof with  
145 the department that names the transferee, the amount of tax credit transferred, and the value  
146 received for the credit, as well as any other information reasonably requested by the department.  
147 For a qualified company with flow-through tax treatment to its members, partners, or  
148 shareholders, the tax credit shall be allowed to members, partners, or shareholders in proportion  
149 to their share of ownership on the last day of the qualified company's tax period.

150 11. Prior to the issuance of tax credits or the qualified company beginning to retain  
151 withholding taxes, the department shall verify through the department of revenue and any other  
152 applicable state department that the tax credit applicant does not owe any delinquent income,  
153 sales, or use tax or interest or penalties on such taxes, or any delinquent fees or assessments  
154 levied by any state department and through the department of commerce and insurance that the  
155 applicant does not owe any delinquent insurance taxes or other fees. Such delinquency shall not  
156 affect the approval, except that any tax credits issued shall be first applied to the delinquency and  
157 any amount issued shall be reduced by the applicant's tax delinquency. If the department of  
158 revenue, the department of commerce and insurance, or any other state department concludes that  
159 a taxpayer is delinquent after June fifteenth but before July first of any year and the application  
160 of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then

161 the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and  
162 additions to tax shall be tolled. After applying all available credits toward a tax delinquency, the  
163 administering agency shall notify the appropriate department and that department shall update  
164 the amount of outstanding delinquent tax owed by the applicant. If any credits remain after  
165 satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be  
166 issued to the applicant, subject to the restrictions of other provisions of law.

167 12. The director of revenue shall issue a refund to the qualified company to the extent  
168 that the amount of tax credits allowed under this program exceeds the amount of the qualified  
169 company's tax liability under chapter 143 or 148.

170 13. An employee of a qualified company shall receive full credit for the amount of tax  
171 withheld as provided in section 143.211.

172 14. Notwithstanding any provision of law to the contrary, beginning August 28, 2013,  
173 no new benefits shall be authorized for any project that had not received from the department a  
174 proposal or approval for such benefits prior to August 28, 2013, under the development tax credit  
175 program created under sections 32.100 to 32.125, the rebuilding communities tax credit program  
176 created under section 135.535, the enhanced enterprise zone tax credit program created under  
177 sections 135.950 to 135.973, and the Missouri quality jobs program created under sections  
178 620.1875 to 620.1890. The provisions of this subsection shall not be construed to limit or impair  
179 the ability of any administering agency to authorize or issue benefits for any project that had  
180 received an approval or a proposal from the department under any of the programs referenced  
181 in this subsection prior to August 28, 2013, or the ability of any taxpayer to redeem any such tax  
182 credits or to retain any withholding tax under an approval issued prior to that date. The  
183 provisions of this subsection shall not be construed to limit or in any way impair the ability of  
184 any governing authority to provide any local abatement or designate a new zone under the  
185 enhanced enterprise zone program created by sections 135.950 to 135.963. Notwithstanding any  
186 provision of law to the contrary, no qualified company that is awarded benefits under this  
187 program shall:

188 (1) Simultaneously receive benefits under the programs referenced in this subsection at  
189 the same capital investment; or

190 (2) Receive benefits under the provisions of section 620.1910 for the same jobs.

191 15. If any provision of sections 620.2000 to 620.2020 or application thereof to any  
192 person or circumstance is held invalid, the invalidity shall not affect other provisions or  
193 application of these sections which can be given effect without the invalid provisions or  
194 application, and to this end, the provisions of sections 620.2000 to 620.2020 are hereby declared  
195 severable.

196 16. By no later than January 1, 2014, and the first day of each calendar quarter thereafter,  
197 the department shall present a quarterly report to the general assembly detailing the benefits  
198 authorized under this program during the immediately preceding calendar quarter to the extent  
199 such information may be disclosed under state and federal law. The report shall include, at a  
200 minimum:

201 (1) A list of all approved and disapproved applicants for each tax credit;

202 (2) A list of the aggregate amount of new or retained jobs that are directly attributable  
203 to the tax credits authorized;

204 (3) A statement of the aggregate amount of new capital investment directly attributable  
205 to the tax credits authorized;

206 (4) Documentation of the estimated net state fiscal benefit for each authorized project  
207 and, to the extent available, the actual benefit realized upon completion of such project or  
208 activity; and

209 (5) The department's response time for each request for a proposed benefit award under  
210 this program.

211 17. The department may adopt such rules, statements of policy, procedures, forms, and  
212 guidelines as may be necessary to carry out the provisions of sections 620.2000 to 620.2020.  
213 Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the  
214 authority delegated in this section shall become effective only if it complies with and is subject  
215 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
216 chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant  
217 to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
218 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed  
219 or adopted after August 28, 2013, shall be invalid and void.

220 18. Under section 23.253 of the Missouri sunset act:

221 (1) The provisions of the program authorized under sections 620.2000 to 620.2020 shall  
222 be reauthorized as of August 28, 2018, and shall expire on August 28, 2030; and

223 (2) If such program is reauthorized, the program authorized under this section shall  
224 automatically sunset twelve years after the effective date of the reauthorization of sections  
225 620.2000 to 620.2020; and

226 (3) Sections 620.2000 to 620.2020 shall terminate on September first of the calendar  
227 year immediately following the calendar year in which the program authorized under sections  
228 620.2000 to 620.2020 is sunset.

Section B. Because of the importance of economic development to the state of Missouri,  
2 section A of this act is deemed necessary for the immediate preservation of the public health,  
3 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of

4 the constitution, and section A of this act shall be in full force and effect upon its passage and  
5 approval.

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