

SECOND REGULAR SESSION

# HOUSE BILL NO. 2087

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LYNCH.

5534H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 620.2005, RSMo, and to enact in lieu thereof two new sections relating to the Missouri works program.

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

Section A. Section 620.2005, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 620.2005 and 620.2007, to read as follows:

620.2005. **1.** As used in sections 620.2000 to 620.2020, the following terms mean:

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

(2) "Commencement of operations", the starting date for the qualified company's first new employee, which shall be no later than twelve months from the date of the approval;

(3) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

(4) "Department", the Missouri department of economic development;

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 (5) "Director", the director of the department of economic development;
- 19 (6) "Employee", a person employed by a qualified company, excluding:
- 20 (a) Owners of the qualified company unless the qualified company is participating in an
- 21 employee stock ownership plan; or
- 22 (b) Owners of a noncontrolling interest in stock of a qualified company that is publicly
- 23 traded;
- 24 (7) "Existing Missouri business", a qualified company that, for the ten-year period
- 25 preceding submission of a notice of intent to the department, had a physical location in Missouri
- 26 and full-time employees who routinely [perform] **performed** job duties within Missouri;
- 27 (8) "Full-time employee", an employee of the qualified company that is scheduled to
- 28 work an average of at least thirty-five hours per week for a twelve-month period, and one for
- 29 which the qualified company offers health insurance and pays at least fifty percent of such
- 30 insurance premiums. An employee that spends less than fifty percent of the employee's work
- 31 time at the facility shall be considered to be located at a facility if the employee receives his or
- 32 her directions and control from that facility, is on the facility's payroll, one hundred percent of
- 33 the employee's income from such employment is Missouri income, and the employee is paid at
- 34 or above the applicable percentage of the county average wage;
- 35 (9) "Local incentives", the present value of the dollar amount of direct benefit received
- 36 by a qualified company for a project facility from one or more local political subdivisions, but
- 37 this term shall not include loans or other funds provided to the qualified company that shall be
- 38 repaid by the qualified company to the political subdivision;
- 39 (10) "NAICS" or "NAICS industry classification", the classification provided by the
- 40 most recent edition of the North American Industry Classification System as prepared by the
- 41 Executive Office of the President, Office of Management and Budget;
- 42 (11) "New capital investment", shall include costs incurred by the qualified company at
- 43 the project facility after acceptance by the qualified company of the proposal for benefits from
- 44 the department or the approval notice of intent, whichever occurs first, for real or personal
- 45 property, and may include the value of finance or capital leases for real or personal property for
- 46 the term of such lease at the project facility executed after acceptance by the qualified company
- 47 of the proposal for benefits from the department or the approval of the notice of intent;
- 48 (12) "New direct local revenue", the present value of the dollar amount of direct net new
- 49 tax revenues of the local political subdivisions likely to be produced by the project over a
- 50 ten-year period as calculated by the department, excluding local earnings tax, and net new utility
- 51 revenues, provided the local incentives include a discount or other direct incentives from utilities
- 52 owned or operated by the political subdivision;

53 (13) "New job", the number of full-time employees located at the project facility that  
54 exceeds the project facility base employment less any decrease in the number of full-time  
55 employees at related facilities below the related facility base employment. No job that was  
56 created prior to the date of the notice of intent shall be deemed a new job;

57 (14) "New payroll", the amount of wages paid for all new jobs, located at the project  
58 facility during the qualified company's tax year that exceeds the project facility base payroll;

59 (15) "Notice of intent", a form developed by the department and available online,  
60 completed by the qualified company, and submitted to the department stating the qualified  
61 company's intent to request benefits under this program;

62 (16) "Percent of local incentives", the amount of local incentives divided by the amount  
63 of new direct local revenue;

64 (17) "Program", the Missouri works program established in sections 620.2000 to  
65 620.2020;

66 (18) "Project facility", the building or buildings used by a qualified company at which  
67 new or retained jobs and any new capital investment are or will be located. A project facility  
68 may include separate buildings located within sixty miles of each other such that their purpose  
69 and operations are interrelated; provided that where the buildings making up the project facility  
70 are not located within the same county, the average wage of the new payroll shall exceed the  
71 applicable percentage of the highest county average wage among the counties in which the  
72 buildings are located. Upon approval by the department, a subsequent project facility may be  
73 designated if the qualified company demonstrates a need to relocate to the subsequent project  
74 facility at any time during the project period;

75 (19) "Project facility base employment", the greater of the number of full-time  
76 employees located at the project facility on the date of the notice of intent or, for the  
77 twelve-month period prior to the date of the notice of intent, the average number of full-time  
78 employees located at the project facility. In the event the project facility has not been in  
79 operation for a full twelve-month period, the average number of full-time employees for the  
80 number of months the project facility has been in operation prior to the date of the notice of  
81 intent;

82 (20) "Project facility base payroll", the annualized payroll for the project facility base  
83 employment or the total amount of **taxable** wages paid by the qualified company to full-time  
84 employees of the qualified company located at the project facility in the twelve months prior to  
85 the notice of intent. For purposes of calculating the benefits under this program, the amount of  
86 base payroll shall increase each year based on an appropriate measure, as determined by the  
87 department;

88 (21) "Project period", the time period within which benefits are awarded to a qualified  
89 company or within which the qualified company is obligated to perform under an agreement with  
90 the department, whichever is greater;

91 (22) "Projected net fiscal benefit", the total fiscal benefit to the state less any state  
92 benefits offered to the qualified company, as determined by the department;

93 (23) "Qualified company", a firm, partnership, joint venture, association, private or  
94 public corporation whether organized for profit or not, or headquarters of such entity registered  
95 to do business in Missouri that is the owner or operator of a project facility, certifies that it offers  
96 health insurance to all full-time employees of all facilities located in this state, and certifies that  
97 it pays at least fifty percent of such insurance premiums. **The term "qualified company" shall**  
98 **include the United States Department of Defense, subject to the requirements of section**  
99 **620.2007.** For the purposes of sections 620.2000 to 620.2020, the term "qualified company"  
100 shall not include:

101 (a) Gambling establishments (NAICS industry group 7132);

102 (b) Store front consumer-based retail trade establishments (under NAICS sectors 44 and  
103 45), except with respect to any company headquartered in this state with a majority of its  
104 full-time employees engaged in operations not within the NAICS codes specified in this  
105 subdivision;

106 (c) Food and drinking places (NAICS subsector 722);

107 (d) Public utilities (NAICS 221 including water and sewer services);

108 (e) Any company that is delinquent in the payment of any nonprotested taxes or any  
109 other amounts due the state or federal government or any other political subdivision of this state;

110 (f) Any company requesting benefits for retained jobs that has filed for or has publicly  
111 announced its intention to file for bankruptcy protection. However, a company that has filed for  
112 or has publicly announced its intention to file for bankruptcy may be a qualified company  
113 provided that such company:

114 a. Certifies to the department that it plans to reorganize and not to liquidate; and

115 b. After its bankruptcy petition has been filed, it produces proof, in a form and at times  
116 satisfactory to the department, that it is not delinquent in filing any tax returns or making any  
117 payment due to the state of Missouri, including but not limited to all tax payments due after the  
118 filing of the bankruptcy petition and under the terms of the plan of reorganization. Any taxpayer  
119 who is awarded benefits under this subsection and who files for bankruptcy under Chapter 7 of  
120 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the department and  
121 shall forfeit such benefits and shall repay the state an amount equal to any state tax credits  
122 already redeemed and any withholding taxes already retained;

123 (g) Educational services (NAICS sector 61);

- 124 (h) Religious organizations (NAICS industry group 8131);  
125 (i) Public administration (NAICS sector 92);  
126 (j) Ethanol distillation or production;  
127 (k) Biodiesel production; or  
128 (l) Health care and social services (NAICS sector 62). Notwithstanding any provision  
129 of this section to the contrary, the headquarters, administrative offices, or research and  
130 development facilities of an otherwise excluded business may qualify for benefits if the offices  
131 or facilities serve a multistate territory. In the event a national, state, or regional headquarters  
132 operation is not the predominant activity of a project facility, the jobs and investment of such  
133 operation shall be considered eligible for benefits under this section if the other requirements are  
134 satisfied;
- 135 (24) "Related company", shall mean:
- 136 (a) A corporation, partnership, trust, or association controlled by the qualified company;  
137 (b) An individual, corporation, partnership, trust, or association in control of the  
138 qualified company; or  
139 (c) Corporations, partnerships, trusts or associations controlled by an individual,  
140 corporation, partnership, trust, or association in control of the qualified company. As used in this  
141 paragraph, "control of a qualified company" shall mean:
- 142 a. Ownership, directly or indirectly, of stock possessing at least fifty percent of the total  
143 combined voting power of all classes of stock entitled to vote in the case of a qualified company  
144 that is a corporation;
- 145 b. Ownership of at least fifty percent of the capital or [profits] **profit** interest in such  
146 qualified company if it is a partnership or association;
- 147 c. Ownership, directly or indirectly, of at least fifty percent of the beneficial interest in  
148 the principal or income of such qualified company if it is a trust, and ownership shall be  
149 determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;
- 150 (25) "Related facility", a facility operated by the qualified company or a related company  
151 located in this state that is directly related to the operations of the project facility or in which  
152 operations substantially similar to the operations of the project facility are performed;
- 153 (26) "Related facility base employment", the greater of the number of full-time  
154 employees located at all related facilities on the date of the notice of intent or, for the  
155 twelve-month period prior to the date of the notice of intent, the average number of full-time  
156 employees located at all related facilities of the qualified company or a related company located  
157 in this state;
- 158 (27) "Related facility base payroll", the annualized payroll of the related facility base  
159 payroll or the total amount of taxable wages paid by the qualified company to full-time

160 employees of the qualified company located at a related facility in the twelve months prior to the  
161 filing of the notice of intent. For purposes of calculating the benefits under this program, the  
162 amount of related facility base payroll shall increase each year based on an appropriate measure,  
163 as determined by the department;

164 (28) "Rural area", a county in Missouri with a population less than seventy-five thousand  
165 or that does not contain an individual city with a population greater than fifty thousand according  
166 to the most recent federal decennial census;

167 (29) "Tax credits", tax credits issued by the department to offset the state taxes imposed  
168 by chapters 143 and 148, or which may be sold or refunded as provided for in this program;

169 (30) "Withholding tax", the state tax imposed by sections 143.191 to 143.265. For  
170 purposes of this program, the withholding tax shall be computed using a schedule as determined  
171 by the department based on average wages; and

172 [(31)] 2. This section is subject to the provisions of section 196.1127.

**620.2007. 1. A qualified company shall include the United States Department of  
2 Defense if:**

3 **(1) The director determines or is notified that the federal government is soliciting**  
4 **proposals or otherwise inviting states to compete for additional employment or expansion**  
5 **of employment at or near armed forces military installations; and**

6 **(2) The United States Department of Defense offers health insurance to all full-time**  
7 **employees of all facilities located in this state and certifies that it pays at least fifty percent**  
8 **of such insurance premiums.**

9 **2. The United States Department of Defense shall not apply for benefits under the**  
10 **provisions of this program unless it is a co-applicant for benefits with:**

11 **(1) An industrial development corporation organized and existing under chapter**  
12 **349; or**

13 **(2) The Missouri development finance board created under section 100.265.**

14 **3. The industrial development corporation or the Missouri development finance**  
15 **board shall have a significant role in acquiring, maintaining, constructing, improving,**  
16 **enlarging, renewing, renovating, replacing, leasing, equipping, or furnishing the project**  
17 **facility at which the new jobs will be located.**

18 **4. If the United States Department of Defense is a co-applicant for benefits as**  
19 **described in this section, the United States Department of Defense shall remit withholding**  
20 **taxes for new jobs as provided for by sections 143.191 to 143.265, but the department shall**  
21 **then pay the industrial development corporation or the Missouri development finance**  
22 **board, as applicable, an amount equal to the amount that the qualified company would**  
23 **have otherwise retained or received under section 620.2010, including any tax credits.**

24           **5. If an industrial development corporation or the Missouri development finance**  
25 **board receives an incentive payment under this section or proceeds from tax credit refunds**  
26 **or transfers under this section, it shall deposit such payment in a separate fund and shall**  
27 **not use such moneys for any purpose other than payment of expenses associated with the**  
28 **project facility.**

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