

# SENATE BILL NO. 227

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

0545S.01I

ADRIANE D. CROUSE, Secretary

## 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Section A. Section 620.2020, RSMo, is repealed and one  
2 new section enacted in lieu thereof, to be known as section  
3 620.2020, to read as follows:

620.2020. 1. The department shall respond to a  
2 written request, by or on behalf of a qualified company or  
3 qualified military project, for a proposed benefit award  
4 under the provisions of this program within five business  
5 days of receipt of such request. The department shall  
6 respond to a written request, by or on behalf of a qualified  
7 manufacturing company, for a proposed benefit award under  
8 the provisions of this program within fifteen business days  
9 of receipt of such request. Such response shall contain  
10 either a proposal of benefits for the qualified company or  
11 qualified military project, or a written response refusing  
12 to provide such a proposal and stating the reasons for such  
13 refusal. A qualified company or qualified military project  
14 that intends to seek benefits under the program shall submit  
15 to the department a notice of intent. The department shall  
16 respond within thirty days to a notice of intent with an  
17 approval or a rejection, provided that the department may  
18 withhold approval or provide a contingent approval until it  
19 is satisfied that proper documentation of eligibility has  
20 been provided. The department shall certify or reject the

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

21 qualifying company's plan outlined in their notice of intent  
22 as satisfying good faith efforts made to employ, at a  
23 minimum, commensurate with the percentage of minority  
24 populations in the state of Missouri, as reported in the  
25 previous decennial census, the following: racial minorities,  
26 contractors who are racial minorities, and contractors that,  
27 in turn, employ at a minimum racial minorities commensurate  
28 with the percentage of minority populations in the state of  
29 Missouri, as reported in the previous decennial census.  
30 Failure to respond on behalf of the department shall result  
31 in the notice of intent being deemed approved. A qualified  
32 company receiving approval for program benefits may receive  
33 additional benefits for subsequent new jobs at the same  
34 facility after the full initial project period if the  
35 applicable minimum job requirements are met. There shall be  
36 no limit on the number of project periods a qualified  
37 company may participate in the program, and a qualified  
38 company may elect to file a notice of intent to begin a new  
39 project period concurrent with an existing project period if  
40 the applicable minimum job requirements are achieved, the  
41 qualified company provides the department with the required  
42 annual reporting, and the qualified company is in compliance  
43 with this program and any other state programs in which the  
44 qualified company is currently or has previously  
45 participated. However, the qualified company shall not  
46 receive any further program benefits under the original  
47 approval for any new jobs created after the date of the new  
48 notice of intent, and any jobs created before the new notice  
49 of intent shall not be included as new jobs for purposes of  
50 the benefit calculation for the new approval. When a  
51 qualified company has filed and received approval of a  
52 notice of intent and subsequently files another notice of

53 intent, the department shall apply the definition of project  
54 facility under subdivision (24) of section 620.2005 to the  
55 new notice of intent as well as all previously approved  
56 notices of intent and shall determine the application of the  
57 definitions of new job, new payroll, project facility base  
58 employment, and project facility base payroll accordingly.

59 2. Notwithstanding any provision of law to the  
60 contrary, the benefits available to the qualified company  
61 under any other state programs for which the company is  
62 eligible and which utilize withholding tax from the new or  
63 retained jobs of the company shall first be credited to the  
64 other state program before the withholding retention level  
65 applicable under this program will begin to accrue. If any  
66 qualified company also participates in a job training  
67 program utilizing withholding tax, the company shall retain  
68 no withholding tax under this program, but the department  
69 shall issue a refundable tax credit for the full amount of  
70 benefit allowed under this program. The calendar year  
71 annual maximum amount of tax credits which may be issued to  
72 a qualifying company that also participates in a job  
73 training program shall be increased by an amount equivalent  
74 to the withholding tax retained by that company under a jobs  
75 training program.

76 3. A qualified company or qualified military project  
77 receiving benefits under this program shall provide an  
78 annual report of the number of jobs, along with minority  
79 jobs created or retained, and such other information as may  
80 be required by the department to document the basis for  
81 program benefits available no later than ninety days prior  
82 to the end of the qualified company's or industrial  
83 development authority's tax year immediately following the  
84 tax year for which the benefits provided under the program

85 are attributed. In such annual report, if the average wage  
86 is below the applicable percentage of the county average  
87 wage, the qualified company or qualified military project  
88 has not maintained the employee insurance as required, if  
89 the department after a review determines the qualifying  
90 company fails to satisfy other aspects of their notice of  
91 intent, including failure to make good faith efforts to  
92 employ, at a minimum, commensurate with the percentage of  
93 minority populations in the state of Missouri, as reported  
94 in the previous decennial census, the following: racial  
95 minorities, contractors who are racial minorities, and  
96 contractors that, in turn, employ at a minimum racial  
97 minorities commensurate with the percentage of minority  
98 populations in the state of Missouri, as reported in the  
99 previous decennial census, or if the number of jobs is below  
100 the number required, the qualified company or qualified  
101 military project shall not receive tax credits or retain the  
102 withholding tax for the balance of the project period.  
103 Failure to timely file the annual report required under this  
104 section [shall] **may** result in the forfeiture of tax credits  
105 attributable to the year for which the reporting was  
106 required and a recapture of withholding taxes retained by  
107 the qualified company or qualified military project during  
108 such year.

109 4. The department may withhold the approval of any  
110 benefits under this program until it is satisfied that  
111 proper documentation has been provided, and shall reduce the  
112 benefits to reflect any reduction in full-time employees or  
113 payroll. Upon approval by the department, the qualified  
114 company may begin the retention of the withholding taxes  
115 when it reaches the required number of jobs and the average  
116 wage meets or exceeds the applicable percentage of county

117 average wage. Tax credits, if any, may be issued upon  
118 satisfaction by the department that the qualified company  
119 has exceeded the applicable percentage of county average  
120 wage and the required number of jobs; provided that, tax  
121 credits awarded under subsection 7 of section 620.2010 may  
122 be issued following the qualified company's acceptance of  
123 the department's proposal and pursuant to the requirements  
124 set forth in the written agreement between the department  
125 and the qualified company under subsection 4 of section  
126 620.2010.

127 5. Any qualified company or qualified military project  
128 approved for benefits under this program shall provide to  
129 the department, upon request, any and all information and  
130 records reasonably required to monitor compliance with  
131 program requirements. This program shall be considered a  
132 business recruitment tax credit under subdivision (4) of  
133 subsection 2 of section 135.800, and any qualified company  
134 or qualified military project approved for benefits under  
135 this program shall be subject to the provisions of sections  
136 135.800 to 135.830.

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

143 7. (1) The maximum amount of tax credits that may be  
144 authorized under this program for any fiscal year shall be  
145 limited as follows, less the amount of any tax credits  
146 previously obligated for that fiscal year under any of the  
147 tax credit programs referenced in subsection 14 of this  
148 section:

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

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

155 (c) For fiscal years beginning on or after July 1,  
156 2015, but ending on or before June 30, 2020, no more than  
157 one hundred sixteen million dollars in tax credits may be  
158 authorized for each fiscal year; and

159 (d) For all fiscal years beginning on or after July 1,  
160 2020, no more than one hundred six million dollars in tax  
161 credits may be authorized for each fiscal year. The  
162 provisions of this paragraph shall not apply to tax credits  
163 issued to qualified companies under a notice of intent filed  
164 prior to July 1, 2020.

165 (2) For all fiscal years beginning on or after July 1,  
166 2020, in addition to the amount of tax credits that may be  
167 authorized under paragraph (d) of subdivision (1) of this  
168 subsection, an additional ten million dollars in tax credits  
169 may be authorized for each fiscal year for the purpose of  
170 the completion of infrastructure projects directly connected  
171 with the creation or retention of jobs under the provisions  
172 of sections 620.2000 to 620.2020 and an additional ten  
173 million dollars in tax credits may be authorized for each  
174 fiscal year for a qualified manufacturing company based on a  
175 manufacturing capital investment as set forth in section  
176 620.2010.

177 8. For all fiscal years beginning on or after July 1,  
178 2020, the maximum total amount of withholding tax that may  
179 be authorized for retention for the creation of new jobs  
180 under the provisions of sections 620.2000 to 620.2020 by

181 qualified companies with a project facility base employment  
182 of at least fifty shall not exceed seventy-five million  
183 dollars for each fiscal year. The provisions of this  
184 subsection shall not apply to withholding tax authorized for  
185 retention for the creation of new jobs by qualified  
186 companies with a project facility base employment of less  
187 than fifty.

188 9. For tax credits for the creation of new jobs under  
189 section 620.2010, the department shall allocate the annual  
190 tax credits based on the date of the approval, reserving  
191 such tax credits based on the department's best estimate of  
192 new jobs and new payroll of the project, and any other  
193 applicable factors in determining the amount of benefits  
194 available to the qualified company or qualified military  
195 project under this program; provided that, the department  
196 may reserve up to twenty-one and one-half percent of the  
197 maximum annual amount of tax credits that may be authorized  
198 under subsection 7 of this section for award under  
199 subsection 7 of section 620.2010. However, the annual  
200 issuance of tax credits shall be subject to annual  
201 verification of actual payroll by the department or, for  
202 qualified military projects, annual verification of average  
203 salary for the jobs directly created by the qualified  
204 military project. Any authorization of tax credits shall  
205 expire if, within two years from the date of commencement of  
206 operations, or approval if applicable, the qualified company  
207 has failed to meet the applicable minimum job requirements.  
208 The qualified company may retain authorized amounts from the  
209 withholding tax under the project once the applicable  
210 minimum job requirements have been met for the duration of  
211 the project period. No benefits shall be provided under  
212 this program until the qualified company or qualified

213 military project meets the applicable minimum new job  
214 requirements or, for benefits awarded under subsection 7 of  
215 section 620.2010, until the qualified company has satisfied  
216 the requirements set forth in the written agreement between  
217 the department and the qualified company under subsection 4  
218 of section 620.2010. In the event the qualified company or  
219 qualified military project does not meet the applicable  
220 minimum new job requirements, the qualified company or  
221 qualified military project may submit a new notice of intent  
222 or the department may provide a new approval for a new  
223 project of the qualified company or qualified military  
224 project at the project facility or other facilities.

225 10. Tax credits provided under this program may be  
226 claimed against taxes otherwise imposed by chapters 143 and  
227 148, and may not be carried forward, but shall be claimed  
228 within one year of the close of the taxable year for which  
229 they were issued. Tax credits provided under this program  
230 may be transferred, sold, or assigned by filing a notarized  
231 endorsement thereof with the department that names the  
232 transferee, the amount of tax credit transferred, and the  
233 value received for the credit, as well as any other  
234 information reasonably requested by the department. For a  
235 qualified company with flow-through tax treatment to its  
236 members, partners, or shareholders, the tax credit shall be  
237 allowed to members, partners, or shareholders in proportion  
238 to their share of ownership on the last day of the qualified  
239 company's tax period.

240 11. Prior to the issuance of tax credits or the  
241 qualified company beginning to retain withholding taxes, the  
242 department shall verify through the department of revenue  
243 and any other applicable state department that the tax  
244 credit applicant does not owe any delinquent income, sales,

245 or use tax or interest or penalties on such taxes, or any  
246 delinquent fees or assessments levied by any state  
247 department and through the department of commerce and  
248 insurance that the applicant does not owe any delinquent  
249 insurance taxes or other fees. Such delinquency shall not  
250 affect the approval, except that any tax credits issued  
251 shall be first applied to the delinquency and any amount  
252 issued shall be reduced by the applicant's tax delinquency.  
253 If the department of revenue, the department of commerce and  
254 insurance, or any other state department concludes that a  
255 taxpayer is delinquent after June fifteenth but before July  
256 first of any year and the application of tax credits to such  
257 delinquency causes a tax deficiency on behalf of the  
258 taxpayer to arise, then the taxpayer shall be granted thirty  
259 days to satisfy the deficiency in which interest, penalties,  
260 and additions to tax shall be tolled. After applying all  
261 available credits toward a tax delinquency, the  
262 administering agency shall notify the appropriate department  
263 and that department shall update the amount of outstanding  
264 delinquent tax owed by the applicant. If any credits remain  
265 after satisfying all insurance, income, sales, and use tax  
266 delinquencies, the remaining credits shall be issued to the  
267 applicant, subject to the restrictions of other provisions  
268 of law.

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

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

276           14. Notwithstanding any provision of law to the  
277 contrary, beginning August 28, 2013, no new benefits shall  
278 be authorized for any project that had not received from the  
279 department a proposal or approval for such benefits prior to  
280 August 28, 2013, under the development tax credit program  
281 created under sections 32.100 to 32.125, the rebuilding  
282 communities tax credit program created under section  
283 135.535, the enhanced enterprise zone tax credit program  
284 created under sections 135.950 to 135.973, and the Missouri  
285 quality jobs program created under sections 620.1875 to  
286 620.1890. The provisions of this subsection shall not be  
287 construed to limit or impair the ability of any  
288 administering agency to authorize or issue benefits for any  
289 project that had received an approval or a proposal from the  
290 department under any of the programs referenced in this  
291 subsection prior to August 28, 2013, or the ability of any  
292 taxpayer to redeem any such tax credits or to retain any  
293 withholding tax under an approval issued prior to that  
294 date. The provisions of this subsection shall not be  
295 construed to limit or in any way impair the ability of any  
296 governing authority to provide any local abatement or  
297 designate a new zone under the enhanced enterprise zone  
298 program created by sections 135.950 to 135.963.  
299 Notwithstanding any provision of law to the contrary, no  
300 qualified company that is awarded benefits under this  
301 program shall:

302           (1) Simultaneously receive benefits under the programs  
303 referenced in this subsection at the same capital  
304 investment; or

305           (2) Receive benefits under the provisions of section  
306 620.1910 for the same jobs.

307           15. If any provision of sections 620.2000 to 620.2020  
308 or application thereof to any person or circumstance is held  
309 invalid, the invalidity shall not affect other provisions or  
310 application of these sections which can be given effect  
311 without the invalid provisions or application, and to this  
312 end, the provisions of sections 620.2000 to 620.2020 are  
313 hereby declared severable.

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

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

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

326           (3) A statement of the aggregate amount of new capital  
327 investment directly attributable to the tax credits  
328 authorized;

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

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

335           17. The department may adopt such rules, statements of  
336 policy, procedures, forms, and guidelines as may be  
337 necessary to carry out the provisions of sections 620.2000  
338 to 620.2020. Any rule or portion of a rule, as that term is

339 defined in section 536.010, that is created under the  
340 authority delegated in this section shall become effective  
341 only if it complies with and is subject to all of the  
342 provisions of chapter 536 and, if applicable, section  
343 536.028. This section and chapter 536 are nonseverable and  
344 if any of the powers vested with the general assembly  
345 pursuant to chapter 536 to review, to delay the effective  
346 date, or to disapprove and annul a rule are subsequently  
347 held unconstitutional, then the grant of rulemaking  
348 authority and any rule proposed or adopted after August 28,  
349 2013, shall be invalid and void.

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

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

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

358 (3) Sections 620.2000 to 620.2020 shall terminate on  
359 September first of the calendar year immediately following  
360 the calendar year in which the program authorized under  
361 sections 620.2000 to 620.2020 is sunset.

Section B. Because of the importance of economic  
2 development to the state of Missouri, section A of this act  
3 is deemed necessary for the immediate preservation of the  
4 public health, welfare, peace, and safety, and is hereby  
5 declared to be an emergency act within the meaning of the  
6 constitution, and section A of this act shall be in full  
7 force and effect upon its passage and approval.

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