

SECOND REGULAR SESSION

SENATE BILL NO. 551

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4766S.011

AN ACT

To repeal sections 620.2005, 620.2010, 620.2015, and 620.2020, RSMo, and to enact in lieu thereof four new sections relating to financial incentives for job creation.

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

Section A. Sections 620.2005, 620.2010, 620.2015, and 620.2020, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 620.2005, 620.2010, 620.2015, and 620.2020, to read as follows:

620.2005. 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

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

18 from which jobs are being relocated or the county average wage for their project
19 shall be the county average wage for the county from which the employees are
20 being relocated;

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

22 (5) "Director", the director of the department of economic development;

23 (6) "Employee", a person employed by a qualified company, excluding[:

24 (a) Owners of the qualified company unless the qualified company is
25 participating in an employee stock ownership plan; or

26 (b) Owners of a noncontrolling interest in stock of a qualified company
27 that is publicly traded] **owners**;

28 (7) "Existing Missouri business", a qualified company that, for the
29 ten-year period preceding submission of a notice of intent to the department, had
30 a physical location in Missouri and full-time employees who routinely [perform]
31 **performed** job duties within Missouri;

32 (8) "Full-time employee", an employee of the qualified company that is
33 [scheduled to work] **to be employed for** an average of at least thirty-five hours
34 per week for a twelve-month period, **one hundred percent of which produce**
35 **wages to be treated as Missouri income**, and one for which the qualified
36 company [offers health insurance and] pays at least fifty percent of [such] **health**
37 **insurance premiums. The employee may opt out in writing so long as he**
38 **or she receives insurance from some other source.** An employee that
39 spends less than fifty percent of the employee's work time at the facility shall be
40 considered to be located at a facility if the employee receives his or her directions
41 and control from that facility, is on the facility's payroll, one hundred percent of
42 the employee's income from such employment is Missouri income, and the
43 employee is paid at or above the applicable percentage of the county average
44 wage;

45 (9) "Gross wages", **the total annual amount paid to an employee**
46 **by a qualified company prior to any withholdings, taxes, and**
47 **deductions. "Gross wages" shall be used in lieu of "wages" to determine**
48 **eligibility for any benefit issued under sections 620.2005 to 620.2020;**

49 (10) "Local incentives", the present value of the dollar amount of direct
50 benefit received by a qualified company for a project facility from one or more
51 local political subdivisions, but this term shall not include loans or other funds
52 provided to the qualified company that shall be repaid by the qualified company
53 to the political subdivision;

54 [(10)] (11) "NAICS" or "NAICS industry classification", the classification
55 provided by the most recent edition of the North American Industry Classification
56 System as prepared by the Executive Office of the President, Office of
57 Management and Budget;

58 [(11)] (12) "New capital investment", shall include costs incurred by the
59 qualified company at the project facility after acceptance by the qualified
60 company of the proposal for benefits from the department or the approval notice
61 of intent, whichever occurs first, for real or personal property, and may include
62 the value of finance or capital leases for real or personal property for the term of
63 such lease at the project facility executed after acceptance by the qualified
64 company of the proposal for benefits from the department or the approval of the
65 notice of intent;

66 [(12)] (13) "New direct local revenue", the present value of the dollar
67 amount of direct net new tax revenues of the local political subdivisions likely to
68 be produced by the project over a ten-year period as calculated by the
69 department, excluding local earnings tax, and net new utility revenues, provided
70 the local incentives include a discount or other direct incentives from utilities
71 owned or operated by the political subdivision;

72 [(13)] (14) "New job", the number of full-time employees located at the
73 project facility that exceeds the project facility base employment less any decrease
74 in the number of full-time employees at related facilities below the related facility
75 base employment. No job that was created prior to the date of the notice of intent
76 shall be deemed a new job. **In no event shall a benefit under sections**
77 **620.2000 to 620.2020 be provided to any job other than a new job. A job**
78 **shall not be considered a new job merely because of a change of**
79 **ownership in the company, except when a company ceases to do**
80 **business and there is a break in employment, and the company is**
81 **subsequently restarted by new ownership. A company will be**
82 **considered to have ceased business and been restarted by new**
83 **ownership when all of the previous owners have been replaced by new**
84 **owners. Companies acquired with partial ownership and which are**
85 **qualified companies may be eligible to receive the benefits under**
86 **sections 620.2000 to 620.2020 for the remaining term after the effective**
87 **date of the acquisition;**

88 [(14)] (15) "New payroll", the amount of wages paid for all new jobs,
89 located at the project facility during the qualified company's tax year that exceeds

90 the project facility base payroll;

91 [(15)] (16) "Notice of intent", a form developed by the department and
92 available online, completed by the qualified company, and submitted to the
93 department stating the qualified company's intent to request benefits under this
94 program;

95 [(16)] (17) "Owner", a person with an ownership interest in a
96 company, including stockholders, partners, members of a limited
97 liability company, or any similarly situated individual; provided
98 however, that the term "owner" shall not include persons with less than
99 a ten percent ownership interest, persons whose interest is solely
100 through an employee stock ownership plan (ESOP) qualified under the
101 Employee Retirement Income Security Act (ERISA) (Pub. L. 93-406), or
102 persons who own only options to purchase stock or other equity
103 interest in the company and said options have not yet been exercised;
104 and provided further that the person does not have the right to manage
105 the company or direct its operations either solely or as part of a larger
106 group;

107 (18) "Percent of local incentives", the amount of local incentives divided
108 by the amount of new direct local revenue;

109 [(17)] (19) "Program", the Missouri works program established in
110 sections 620.2000 to 620.2020;

111 [(18)] (20) "Project facility", the building or buildings used by a qualified
112 company at which new or retained jobs and any new capital investment are or
113 will be located. A project facility may include separate buildings located within
114 sixty miles of each other such that their purpose and operations are interrelated;
115 provided that where the buildings making up the project facility are not located
116 within the same county, the average wage of the new payroll shall exceed the
117 applicable percentage of the highest county average wage among the counties in
118 which the buildings are located. Upon approval by the department, a subsequent
119 project facility may be designated if the qualified company demonstrates a need
120 to relocate to the subsequent project facility at any time during the project period;

121 [(19)] (21) "Project facility base employment", the greater of the number
122 of full-time employees located at the project facility on the date of the notice of
123 intent or, for the twelve-month period prior to the date of the notice of intent, the
124 average number of full-time employees located at the project facility. In the event
125 the project facility has not been in operation for a full twelve-month period, the

126 average number of full-time employees for the number of months the project
127 facility has been in operation prior to the date of the notice of intent. **In no**
128 **event shall the benefits awarded under sections 620.2000 to 620.2020 be**
129 **construed to apply to base employment;**

130 [(20)] **(22)** "Project facility base payroll", the annualized payroll for the
131 project facility base employment or the total amount of wages paid by the
132 qualified company to full-time employees of the qualified company located at the
133 project facility in the twelve months prior to the notice of intent. For purposes
134 of calculating the benefits under this program **each benefit year**, the amount
135 of base payroll shall [increase each year based on an appropriate measure, as
136 determined by the department] **be equal to or greater than the previous**
137 **year's amount and the number of employees in the base shall remain**
138 **the same. Companies may report numbers of employees in the base by**
139 **hire date or by position replacement and shall declare the method in**
140 **their application. The method selected shall remain in effect for the**
141 **full term of benefits;**

142 [(21)] **(23)** "Project period", the time period within which benefits are
143 awarded to a qualified company or within which the qualified company is
144 obligated to perform under an agreement with the department, whichever is
145 greater;

146 [(22)] **(24)** "Projected net fiscal benefit", the total fiscal benefit to the
147 state less any state benefits offered to the qualified company **inclusive of all**
148 **other department of economic development business development**
149 **programs provided in the project**, as determined by the department;

150 [(23)] **(25)** "Qualified company", a [firm,] partnership, joint venture,
151 [association] **limited liability company**, private or public corporation whether
152 organized for profit or not, or headquarters of such entity registered to do
153 business in Missouri that is the owner or operator of a project facility, certifies
154 that it [offers] **pays fifty percent of health insurance premiums** to all
155 full-time employees of all facilities located in this state[, and certifies that it pays
156 at least fifty percent of such insurance premiums] **unless an employee has**
157 **opted out in writing and receives insurance from some other**
158 **source**. For the purposes of sections 620.2000 to 620.2020, the term "qualified
159 company" shall not include:

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

161 (b) Store front consumer-based retail trade establishments (under NAICS

162 sectors 44 and 45), except with respect to any company headquartered in this
163 state with a majority of its full-time employees engaged in operations not within
164 the NAICS codes specified in this subdivision;

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

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

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

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

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

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

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

187 (h) Religious organizations (NAICS industry group 8131);

188 (i) Public administration (NAICS sector 92);

189 (j) Ethanol distillation or production;

190 (k) Biodiesel production; [or]

191 (l) Health care and social services (NAICS sector 62); **or**

192 **(m) Professional services companies with less than fifty-one**
193 **percent of their annual income generated from outside of the state**
194 **(NAICS sector 541).**

195 Notwithstanding any provision of this section to the contrary, the headquarters,
196 administrative offices, or research and development facilities of an otherwise
197 excluded business may qualify for benefits if the offices or facilities serve a

198 multistate territory. In the event a national, state, or regional headquarters
199 operation is not the predominant activity of a project facility, the jobs and
200 investment of such operation shall be considered eligible for benefits under this
201 section if the other requirements are satisfied;

202 [(24)] **(26)** "Related company", shall mean:

203 (a) A corporation, partnership, trust, or association controlled by the
204 qualified company;

205 (b) An individual, corporation, partnership, trust, or association in control
206 of the qualified company; or

207 (c) Corporations, partnerships, trusts or associations controlled by an
208 individual, corporation, partnership, trust, or association in control of the
209 qualified company. As used in this paragraph, "control of a qualified company"
210 shall mean:

211 a. Ownership, directly or indirectly, of stock possessing at least fifty
212 percent of the total combined voting power of all classes of stock entitled to vote
213 in the case of a qualified company that is a corporation;

214 b. Ownership of at least fifty percent of the capital or profits interest in
215 such qualified company if it is a partnership or association;

216 c. Ownership, directly or indirectly, of at least fifty percent of the
217 beneficial interest in the principal or income of such qualified company if it is a
218 trust, and ownership shall be determined as provided in Section 318 of the
219 Internal Revenue Code of 1986, as amended;

220 [(25)] **(27)** "Related facility", a facility operated by the qualified company
221 or a related company located in this state that is directly related to the operations
222 of the project facility or in which operations substantially similar to the
223 operations of the project facility are performed;

224 [(26)] **(28)** "Related facility base employment", the greater of the number
225 of full-time employees located at all related facilities on the date of the notice of
226 intent or, for the twelve-month period prior to the date of the notice of intent, the
227 average number of full-time employees located at all related facilities of the
228 qualified company or a related company located in this state;

229 [(27)] **(29)** "Related facility base payroll", the annualized payroll of the
230 related facility base payroll or the total amount of taxable wages paid by the
231 qualified company to full-time employees of the qualified company located at a
232 related facility in the twelve months prior to the filing of the notice of intent. For
233 purposes of calculating the benefits under this program, the amount of related

234 facility base payroll shall increase each year based on an appropriate measure,
235 as determined by the department;

236 [(28)] **(30)** "Rural area", a county in Missouri with a population less than
237 seventy-five thousand or that does not contain an individual city with a
238 population greater than fifty thousand according to the most recent federal
239 decennial census;

240 **(31)** "Significant new capital investment", an investment by a
241 qualified company in real and tangible personal property for the
242 purpose of locating or expanding in the state, of which at least twenty
243 percent shall be real property, which exceeds one million dollars;

244 [(29)] **(32)** "Tax credits", tax credits issued by the department to offset
245 the state taxes imposed by chapters 143 and 148, or which may be sold or
246 refunded as provided for in this program;

247 **(33)** "Wages", the value equal to the amount shown in box sixteen
248 of the employee W-2 tax form;

249 [(30)] **(34)** "Withholding tax", the state tax imposed by sections 143.191
250 to 143.265. For purposes of this program, the withholding tax shall be computed
251 using a schedule as determined by the department based on average wages; [and

252 (31)]

253 This section is subject to the provisions of section 196.1127.

620.2010. 1. In exchange for the consideration provided by the new tax
2 revenues and other economic stimuli that will be generated by the new jobs
3 created, a qualified company may, for a period of five years from the date the new
4 jobs are created, or for a period of six years from the date the new jobs are
5 created if the qualified company is an existing Missouri business, [retain an
6 amount equal to the withholding tax as calculated under subdivision (30) of
7 section 620.2005 from the new jobs that would otherwise be withheld and
8 remitted by the qualified company under the provisions of sections 143.191 to
9 143.265] **be awarded by the department a tax credit equal to two and
10 three-quarters percent of new payroll or an amount which creates a
11 projected net fiscal benefit, whichever is less, if:**

12 (1) The qualified company creates ten or more new jobs, and the average
13 gross wage of [the] **all such** new [payroll] **jobs** equals or exceeds ninety percent
14 of the county average wage;

15 (2) The qualified company creates two or more new jobs at a project
16 facility located in a rural area, the average **gross** wage of [the] **all such** new

17 [payroll] **jobs** equals or exceeds ninety percent of the county average wage, and
18 the qualified company commits to making at least one hundred thousand dollars
19 of new capital investment at the project facility within two years; or

20 (3) The qualified company creates two or more new jobs at a project
21 facility located within a zone designated under sections 135.950 to 135.963, the
22 average **gross** wage of [the] **all such** new [payroll] **jobs** equals or exceeds eighty
23 percent of the county average wage, and the qualified company commits to
24 making at least one hundred thousand dollars in new capital investment at the
25 project facility within two years of approval.

26 2. In addition to any benefits available under subsection 1 of this section,
27 the department may award a qualified company that satisfies subdivision (1) of
28 subsection 1 of this section additional tax credits, issued each year for a period
29 of five years from the date the new jobs are created, or for a period of six years
30 from the date the new jobs are created if the qualified company is an existing
31 Missouri business, in an amount equal to or less than six **and one-quarter**
32 percent of new payroll; provided that in no event may the total amount of benefits
33 awarded to a qualified company under this section exceed nine percent of new
34 payroll in any calendar year.

35 3. **In lieu of any other benefits available under this section, the**
36 **department may award a qualified company which makes a significant**
37 **new capital investment a tax credit, issued in equal installments over**
38 **a period of five years after the investment is made and documented by**
39 **the department, where the total amount issued over the term may be**
40 **up to but shall not be more than ten percent of the value of the real and**
41 **personal property purchases made by the qualified company.**

42 4. **In lieu of any other benefits available under this section, the**
43 **department may award a qualified company which creates more than**
44 **two hundred fifty new jobs in a distressed area, as that term is defined**
45 **in section 135.590, or in a zone designated under sections 135.950 to**
46 **135.963, or in an area with an annual unemployment rate equal to three**
47 **percentage points higher than the most recently published statewide**
48 **rate within eighteen months of the submission of the notice of intent,**
49 **and pays an average gross wage for all such new jobs that equals or**
50 **exceeds seventy percent of the county average wage, tax credits issued**
51 **each year for a period of five years from the date the new jobs are**
52 **created, or for a period of six years from the date the new jobs are**

53 **created if the qualified company is an existing Missouri business, in an**
54 **amount up to two and three-quarters percent of new payroll.**

55 **5.** The amount of tax credits awarded to a qualified company under [this
56 subsection] **sections 620.2000 to 620.2020** shall not exceed the projected net
57 fiscal benefit to the state, as determined by the department, and shall not exceed
58 the least amount necessary to obtain the qualified company's commitment to
59 initiate the project. In determining the amount of tax credits to award to a
60 qualified company under this subsection, the department shall consider the
61 following factors:

62 (1) The significance of the qualified company's need for program benefits;

63 (2) The amount of projected net fiscal benefit to the state of the project
64 and the period in which the state would realize such net fiscal benefit;

65 (3) The overall size and quality of the proposed project, including the
66 number of new jobs, new capital investment, proposed wages, growth potential of
67 the qualified company, the potential multiplier effect of the project, and similar
68 factors;

69 (4) The financial stability and creditworthiness of the qualified company;

70 (5) The level of economic distress in the area;

71 (6) An evaluation of the competitiveness of alternative locations for the
72 project facility, as applicable; and

73 (7) The percent of local incentives committed.

74 **[3.] 6.** Upon approval of a notice of intent to receive tax credits under
75 [subsections 2 and 5 of this section] **sections 620.2000 to 620.2020**, the
76 department and the qualified company shall enter into a written agreement
77 covering the applicable project period. The agreement shall specify, at a
78 minimum:

79 (1) The committed number of new jobs, new payroll, and new capital
80 investment for each year during the project period;

81 (2) The date or time period during which the tax credits shall be issued,
82 which may be immediately or over a period not to exceed two years from the date
83 of approval of the notice of intent;

84 (3) Clawback provisions, as may be required by the department, **but shall**
85 **at a minimum include a clawback of any amount of benefit paid in**
86 **excess of a projected net fiscal benefit;** and

87 (4) Any other provisions the department may require.

88 **[4.] 7.** In lieu of the benefits available under [sections] **subsections 1**

89 [and], 2, 3, or 4 of this section, and in exchange for the consideration provided
90 by the new tax revenues and other economic stimuli that will be generated by the
91 new jobs created by the program, a qualified company may, for a period of five
92 years from the date the new jobs are created, or for a period of six years from the
93 date the new jobs are created if the qualified company is an existing Missouri
94 business, [retain an amount equal to the withholding tax as calculated under
95 subdivision (30) of section 620.2005 from the new jobs that would otherwise be
96 withheld and remitted by the qualified company under the provisions of sections
97 143.191 to 143.265] **awarded by the department a tax credit** equal to:

98 (1) Six percent of new payroll for a period of five years from the date the
99 required number of new jobs were created if the qualified company creates one
100 hundred or more new jobs and the average **gross** wage of [the] **all such** new
101 [payroll] **jobs** equals or exceeds one hundred twenty percent of the county
102 average wage of the county in which the project facility is located; or

103 (2) Seven percent of new payroll for a period of five years from the date
104 the required number of jobs were created if the qualified company creates one
105 hundred or more new jobs and the average **gross** wage of [the] **all such** new
106 [payroll] **jobs** equals or exceeds one hundred forty percent of the county average
107 wage of the county in which the project facility is located.

108 [The department shall issue a refundable tax credit for any difference between
109 the amount of benefit allowed under this subsection and the amount of
110 withholding tax retained by the company, in the event the withholding tax is not
111 sufficient to provide the entire amount of benefit due to the qualified company
112 under this subsection.]

113 [5.] **8.** In addition to the benefits available under [subsection]
114 **subsections 4 to 7** of this section, the department may award a qualified
115 company that satisfies the provisions of [subsection] **subsections 4 to 7** of this
116 section additional tax credits, issued each year for a period of five years from the
117 date the new jobs are created, or for a period of six years from the date the new
118 jobs are created if the qualified company is an existing Missouri business, in an
119 amount equal to or less than three percent of new payroll; provided that in no
120 event may the total amount of benefits awarded to a qualified company under this
121 section exceed nine percent of new payroll in any calendar year. The amount of
122 tax credits awarded to a qualified company under this subsection shall not exceed
123 the projected net fiscal benefit to the state, as determined by the department, and
124 shall not exceed the least amount necessary to obtain the qualified company's

125 commitment to initiate the project. In determining the amount of tax credits to
126 award to a qualified company under this subsection, the department shall
127 consider the factors provided under subsection 2 of this section.

128 [6.] 9. No benefits shall be available under [this section] **sections**
129 **620.2000 to 620.2020** for any qualified company that has performed significant,
130 project-specific site work at the project facility, purchased machinery or
131 equipment related to the project, or has publicly announced its intention to make
132 new capital investment at the project facility prior to receipt of a proposal for
133 benefits under this section or approval of its notice of intent, whichever occurs
134 first.

620.2015. 1. In exchange for the consideration provided by the tax
2 revenues and other economic stimuli that will be generated by the retention of
3 jobs and the making of new capital investment in this state, a qualified company
4 may be eligible to receive the benefits described in this section if the department
5 determines that there is a significant probability that the qualified company
6 would relocate to another state in the absence of the benefits authorized under
7 this section. In no event shall the total amount of benefits available to all
8 qualified companies under this section exceed six million dollars in any [fiscal]
9 **calendar year. Any fiscal year benefits authorized prior to August 28,**
10 **2018, shall be attributed to the calendar year in which the fiscal year**
11 **ends.**

12 2. A qualified company meeting the requirements of this section may be
13 authorized to retain an amount not to exceed one hundred percent of the
14 withholding tax from full-time jobs that would otherwise be withheld and
15 remitted by the qualified company under the provisions of sections 143.191 to
16 143.265 for a period of ten years if the average **gross** wage of the retained jobs
17 equals or exceeds ninety percent of the county average wage. In order to receive
18 benefits under this section, a qualified company shall enter into written
19 agreement with the department containing detailed performance requirements
20 and repayment penalties in event of nonperformance. The amount of benefits
21 awarded to a qualified company under this section shall not exceed the projected
22 net fiscal benefit and shall not exceed the least amount necessary to obtain the
23 qualified company's commitment to retain the necessary number of jobs and make
24 the required new capital investment.

25 3. In order to be eligible to receive benefits under this section, the
26 qualified company shall meet each of the following conditions:

27 (1) The qualified company shall agree to retain, for a period of ten years
28 from the date of approval of the notice of intent, at least fifty retained jobs; and

29 (2) The qualified company shall agree to make a new capital investment
30 at the project facility within three years of the approval in an amount equal to
31 one-half the total benefits, available under this section, which are offered to the
32 qualified company by the department.

33 4. In awarding benefits under this section, the department shall consider
34 the factors set forth in subsection 2 of section 620.2010.

35 5. Upon approval of a notice of intent to request benefits under this
36 section, the department and the qualified company shall enter into a written
37 agreement covering the applicable project period. The agreement shall specify,
38 at a minimum:

39 (1) The committed number of retained jobs, payroll, and new capital
40 investment for each year during the project period;

41 (2) Clawback provisions, as may be required by the department; and

42 (3) Any other provisions the department may require.

620.2020. 1. The department shall respond to a written request, by or on
2 behalf of a qualified company, for a proposed benefit award under the provisions
3 of this program within five business days of receipt of such request. Such
4 response shall contain either a proposal of benefits for the qualified company, or
5 a written response refusing to provide such a proposal and stating the reasons for
6 such refusal. A qualified company that intends to seek benefits under the
7 program shall submit to the department a notice of intent. The department shall
8 respond within thirty days to a notice of intent with an approval or a rejection,
9 provided that the department may withhold approval or provide a contingent
10 approval until it is satisfied that proper documentation of eligibility has been
11 provided. Failure to respond on behalf of the department shall result in the
12 notice of intent being deemed approved. A qualified company receiving approval
13 for program benefits may receive additional benefits for subsequent new jobs at
14 the same facility after the full initial project period if the applicable minimum job
15 requirements are met. There shall be no limit on the number of project periods
16 a qualified company may participate in the program, and a qualified company
17 may elect to file a notice of intent to begin a new project period concurrent with
18 an existing project period if the applicable minimum job requirements are
19 achieved, the qualified company provides the department with the required
20 annual reporting, and the qualified company is in compliance with this program

21 and any other state programs in which the qualified company is currently or has
22 previously participated. However, the qualified company shall not receive any
23 further program benefits under the original approval for any new jobs created
24 after the date of the new notice of intent, and any jobs created before the new
25 notice of intent shall not be included as new jobs for purposes of the benefit
26 calculation for the new approval. When a qualified company has filed and
27 received approval of a notice of intent and subsequently files another notice of
28 intent, the department shall apply the definition of project facility under
29 subdivision (18) of section 620.2005 to the new notice of intent as well as all
30 previously approved notices of intent and shall determine the application of the
31 definitions of new job, new payroll, project facility base employment, and project
32 facility base payroll accordingly.

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

45 3. A qualified company receiving benefits under this program shall
46 provide an annual report of the number of jobs and such other information as
47 may be required by the department to document the basis for program benefits
48 available no later than ninety days prior to the end of the qualified company's tax
49 year immediately following the tax year for which the benefits provided under the
50 program are attributed. **A qualified company receiving withholding**
51 **benefits under section 620.2015 shall provide an annual report of the**
52 **number of jobs and such other information as may be required by the**
53 **department to document the basis for program benefits available no**
54 **later than ninety days prior to the end of the calendar year**
55 **immediately following the calendar year for which the benefits**
56 **provided under the program are attributed.** In such annual report, if the

57 average **gross** wage is below the applicable percentage of the county average
58 wage, the qualified company has not maintained the employee insurance as
59 required, or if the number of jobs is below the number required, the qualified
60 company shall not receive tax credits or retain the withholding tax for the
61 balance of the project period. Failure to timely file the annual report required
62 under this section shall result in the forfeiture of tax credits attributable to the
63 year for which the reporting was required [and] **or** a recapture of withholding
64 taxes retained by the qualified company during such year, **as applicable**.

65 4. The department may withhold the approval of any benefits under this
66 program until it is satisfied that proper documentation has been provided, and
67 shall reduce the benefits to reflect any reduction in full-time employees or
68 payroll. Upon approval by the department, the qualified company may begin the
69 retention of the withholding taxes when it reaches the required number of jobs
70 and the average **gross** wage meets or exceeds the applicable percentage of county
71 average wage. Tax credits, if any, may be issued upon satisfaction by the
72 department that the qualified company has exceeded the applicable percentage
73 of county average wage and the required number of jobs.

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

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

86 7. The maximum amount of tax credits that may be authorized under this
87 program for any fiscal year shall be limited as follows, less the amount of any tax
88 credits previously obligated for that fiscal year under any of the tax credit
89 programs referenced in subsection 13 of this section:

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

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

96 (3) For any fiscal year beginning on or after July 1, 2015, no more than
97 one hundred sixteen million dollars in tax credits may be authorized for each
98 fiscal year;

99 **(4) All companies which were approved for or received benefits**
100 **under sections 620.2000 to 620.2020 prior to August 28, 2018, shall**
101 **continue to receive benefits under the same terms and conditions, and**
102 **with the same obligations, as were in place at such time, any changes**
103 **to sections 620.2000 to 620.2020 effective on or after August 28, 2018,**
104 **notwithstanding. For any fiscal year beginning on or after August 28,**
105 **2018, benefits awarded under sections 620.2000 to 620.2020 shall not be**
106 **limited so long as no benefit provided exceeds a projected net fiscal**
107 **benefit and that all project agreements stipulate, at a minimum, a**
108 **clawback of amounts equal to any benefits found to be in excess of the**
109 **projected net fiscal benefit.**

110 8. For tax credits for the creation of new jobs under section 620.2010, the
111 department shall allocate the annual tax credits based on the date of the
112 approval, reserving such tax credits based on the department's best estimate of
113 new jobs and new payroll of the project, and any other applicable factors in
114 determining the amount of benefits available to the qualified company under this
115 program. However, the annual issuance of tax credits shall be subject to annual
116 verification of actual payroll by the department. Any authorization of tax credits
117 shall expire if, within two years from the date of commencement of operations, or
118 approval if applicable, the qualified company has failed to meet the applicable
119 minimum job requirements. The qualified company may retain authorized
120 amounts from the withholding tax under the project once the applicable minimum
121 job requirements have been met for the duration of the project period. No
122 benefits shall be provided under this program until the qualified company meets
123 the applicable minimum new job requirements. In the event the qualified
124 company does not meet the applicable minimum new job requirements, the
125 qualified company may submit a new notice of intent or the department may
126 provide a new approval for a new project of the qualified company at the project
127 facility or other facilities.

128 9. Tax credits provided under this program may be claimed against taxes

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

139 10. Prior to the issuance of tax credits or the qualified company beginning
140 to retain withholding taxes, the department shall verify through the department
141 of revenue and any other applicable state department that the tax credit
142 applicant does not owe any delinquent income, sales, or use tax or interest or
143 penalties on such taxes, or any delinquent fees or assessments levied by any state
144 department and through the department of insurance, financial institutions and
145 professional registration that the applicant does not owe any delinquent
146 insurance taxes or other fees. Such delinquency shall not affect the approval,
147 except that any tax credits issued shall be first applied to the delinquency and
148 any amount issued shall be reduced by the applicant's tax delinquency. If the
149 department of revenue, the department of insurance, financial institutions and
150 professional registration, or any other state department concludes that a taxpayer
151 is delinquent after June fifteenth but before July first of any year and the
152 application of tax credits to such delinquency causes a tax deficiency on behalf of
153 the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the
154 deficiency in which interest, penalties, and additions to tax shall be tolled. After
155 applying all available credits toward a tax delinquency, the administering agency
156 shall notify the appropriate department and that department shall update the
157 amount of outstanding delinquent tax owed by the applicant. If any credits
158 remain after satisfying all insurance, income, sales, and use tax delinquencies,
159 the remaining credits shall be issued to the applicant, subject to the restrictions
160 of other provisions of law.

161 11. The director of revenue shall issue a refund to the qualified company
162 to the extent that the amount of tax credits allowed under this program exceeds
163 the amount of the qualified company's tax liability under chapter 143 or 148.

164 12. An employee of a qualified company shall receive full credit for the

165 amount of tax withheld as provided in section 143.211.

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

- 185 (1) Simultaneously receive benefits under the programs referenced in this
186 subsection at the same capital investment; or
187 (2) Receive benefits under the provisions of section 620.1910 for the same
188 jobs.

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

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

- 199 (1) A list of all approved and disapproved applicants for each tax credit;
200 (2) A list of the aggregate amount of new or retained jobs that are directly

201 attributable to the tax credits authorized;

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

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

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

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

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

221 (1) The provisions of the new program authorized under sections 620.2000
222 to 620.2020 shall automatically sunset six years after August 28, 2013, unless
223 reauthorized by an act of the general assembly; and

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

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

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