

FIRST REGULAR SESSION

SENATE BILL NO. 79

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0720S.011

AN ACT

To amend chapter 620, RSMo, by adding thereto nine new sections relating to tax incentives for investments in rural business.

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

Section A. Chapter 620, RSMo, is amended by adding thereto nine new sections, to be known as sections 620.1950, 620.1951, 620.1952, 620.1953, 620.1954, 620.1955, 620.1956, 620.1957, and 620.1958, to read as follows:

620.1950. Sections 620.1950 to 620.1958 shall be known and may be cited as the "Show Me Rural Jobs Act".

620.1951. As used in sections 620.1950 to 620.1958, the following terms mean:

(1) "Affiliate", a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity. For the purpose of sections 620.1950 to 620.1958, a person is "controlled by" another person if the controlling person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day-to-day operations of the controlled person by contract or by law;

(2) "Approved investment company", an entity approved by the department under section 620.1953;

(3) "Closing date", the date on which an approved investment company collects all of the amounts specified under subsection 6 of section 620.1953;

(4) "Credit-eligible capital contribution", an investment of cash by a person or entity subject to taxes under section 375.916 or chapter 143, 148, or 153, excluding withholding tax imposed under sections

18 143.191 to 143.265, in an approved investment company that equals the
19 amount specified on a tax credit certificate issued under subsection 5
20 of section 620.1953. Such investment shall purchase an equity interest
21 in the approved investment company or purchase, at par value or
22 premium, a debt instrument that has a maturity date at least five years
23 from the date of investment;

24 (5) "Department", the Missouri department of agriculture;

25 (6) "Funding", any capital or equity investment in a rural
26 business concern or any loan to a rural business concern with a final
27 maturity at least two years after the date of issuance;

28 (7) "Growth capital", cash investments in an approved investment
29 company in the amount as stated on the notice issued under subsection
30 5 of section 620.1953 and comprised of at least sixty percent of
31 credit-eligible capital contributions;

32 (8) "Operating company", a company doing business in Missouri
33 excluding any publicly traded business;

34 (9) "Principal business operations", the location where at least
35 sixty percent of the business's employees work or where employees that
36 are paid at least sixty percent of the business's payroll work. A business
37 that has agreed to relocate, using the proceeds of its funding so that it
38 meets the requirements of this definition shall be deemed to have its
39 principal business operations in the new location provided that it
40 satisfies this definition within one hundred eighty days after funding;

41 (10) "Rural area", a location:

42 (a) That is not within a city or town with a population greater
43 than eighty thousand according to the most recent decennial United
44 States census or the urbanized area contiguous and adjacent to such a
45 city or town; or

46 (b) Determined to be "rural in character" by the director of the
47 department;

48 (11) "Rural business concern", an operating company that:

49 (a) Has its principal business operations in one or more rural
50 areas in Missouri;

51 (b) Has fewer than two hundred fifty employees or had a federal
52 adjusted gross income less than fifteen million dollars in the preceding
53 tax year; and

54 (c) Engages in industries related to manufacturing, plant
55 sciences, technology, or agricultural technology or, if not engaged in
56 such industries, the department makes a determination that the
57 targeted funding will be highly beneficial to the economic growth of the
58 state. In making such a determination, the department may consider
59 input, if any, from the Missouri agricultural and small business
60 development authority.

620.1952. 1. There is hereby created in the state treasury the
2 "Show Me Rural Jobs Fund", which shall consist of moneys collected
3 under sections 620.1950 to 620.1958. The state treasurer shall be
4 custodian of the fund. In accordance with sections 30.170 and 30.180,
5 the state treasurer may approve disbursements. The fund shall be a
6 dedicated fund and, upon appropriation, moneys in the fund shall be
7 used solely for the administration of sections 620.1950 to 620.1958.

8 2. Notwithstanding the provisions of section 33.080 to the
9 contrary, any moneys remaining in the fund at the end of the biennium
10 shall not revert to the credit of the general revenue fund.

11 3. The state treasurer shall invest moneys in the fund in the
12 same manner as other funds are invested. Any interest and moneys
13 earned on such investments shall be credited to the fund.

620.1953. 1. Beginning October 1, 2017, the department shall
2 accept applications for approved investment companies. The
3 application shall include:

4 (1) The amount of growth capital sought by the applicant;

5 (2) Either:

6 (a) A copy of the applicant's or its affiliate's license as a rural
7 business investment company under 7 U.S.C. Section 2009cc or as a
8 small business investment company under 15 U.S.C. Section 681 and
9 evidence demonstrating that the applicant or its affiliates have
10 invested at least one hundred million dollars in operating companies
11 and at least fifty million dollars in operating companies located in
12 rural areas; or

13 (b) Evidence demonstrating that the applicant or its affiliates
14 have invested in at least one hundred fifty million dollars in limited
15 partnerships or limited liability companies through one or more federal
16 tax credit program administered by an agency of this state and

17 evidence that the applicant has domiciled in this state for the five
18 years preceding its application;

19 (3) An estimate of the number of jobs that will be created or
20 retained in Missouri as a result of the applicant's funding;

21 (4) A business plan for the applicant's proposed funding that
22 includes a revenue impact assessment prepared by a nationally
23 recognized third-party independent economic forecasting firm and that
24 projects state and local tax revenue to be generated by the applicant's
25 funding under its ten-year business plan;

26 (5) An affidavit from each investor stating a commitment to make
27 a credit-eligible capital contribution in support of the business plan
28 and the amount of such credit-eligible capital contribution; and

29 (6) A nonrefundable application fee of five thousand dollars.

30 The application may also include, but is not required to include, a
31 letter of recommendation from the Missouri agricultural and small
32 business development authority.

33 2. The department shall make an application determination
34 within thirty days of receipt in the order in which applications are
35 received. The department shall deem applications received on the same
36 day as received simultaneously. Except as provided under subsection
37 4 of section 620.1955, the department shall not approve more than one
38 hundred twenty-five million dollars in growth capital and not more
39 than one hundred million dollars in credit-eligible capital contributions
40 under this section. If requests for growth capital exceed this
41 limitation, the department shall proportionally reduce the growth
42 capital and the credit-eligible capital contributions for each approved
43 application as necessary to meet the limitation. No application by an
44 applicant and its affiliates shall be approved for more than one third
45 the limitation provided in this subsection.

46 3. The department shall deny an application submitted under
47 this section if:

48 (1) The application fee is not paid in full;

49 (2) The applicant does not satisfy all the requirements under
50 subdivision 2 of subsection 1 of this section;

51 (3) The revenue impact assessment does not demonstrate that the
52 applicant's business plan will result in a positive economic impact in

53 Missouri over a ten-year period that exceeds the cumulative amount of
54 tax credits the applicant seeks;

55 (4) Commitments for credit-eligible capital contributions do not
56 equal at least sixty percent of the total growth capital sought under the
57 applicant's business plan;

58 (5) The department has already approved the maximum amount
59 of growth capital and credit-eligible capital contributions allowed
60 under subsection 2 of this section; or

61 (6) The department determines that the applicant does not
62 satisfy any other reasonable requirement. Such requirements shall
63 apply to all applicants equally, and the department shall not apply this
64 subdivision arbitrarily.

65 4. If the department denies an application, the applicant may
66 provide additional information within fifteen days of the notice of
67 denial to the department to complete, clarify, or cure defects in the
68 application identified by the department, and the department shall
69 reconsider the application and make a determination within fifteen
70 days before approving any pending applications submitted after the
71 denied applicant's original submission date.

72 5. The department shall not deny an application or reduce the
73 requested growth capital for reasons other than those described under
74 subsections 2 and 3 of this section. If the department approves an
75 application, it shall provide written notice to the applicant stating:

76 (1) The applicant is an approved investment company;

77 (2) The approved amount of the growth capital; and

78 (3) A tax credit certificate for each investor whose affidavit was
79 included in the application.

80 The department shall provide a copy of such notice to the department
81 of economic development.

82 6. After receiving notice of approval, an approved investment
83 company shall:

84 (1) Within sixty days:

85 (a) Collect the credit-eligible capital contributions from each
86 investor who was issued a tax credit certificate; and

87 (b) Collect one or more investments of cash that, if added to
88 credit-eligible capital contributions, equals the approved investment

89 company's growth capital.

90 At least ten percent of the approved investment company's growth
91 capital shall be composed of equity investments contributed by
92 affiliates of the approved investment company, including employees,
93 officers, and directors of such affiliates; and

94 (2) Within sixty-five days, deliver to the department and the
95 department of economic development documentation sufficient to prove
96 that the amounts described under subdivision 1 of this subsection have
97 been collected.

98 7. If the approved investment company fails to fully comply with
99 the provisions of subsection 6 of this section, the approved investment
100 company's approval shall lapse and the corresponding growth capital
101 and credit-eligible capital contributions under this division shall not
102 count toward the limits on total growth capital and credit-eligible
103 capital contributions under subsection 2 of this section. The
104 department shall first award lapsed growth capital pro rata to each
105 approved investment company that was awarded less than its requested
106 growth capital, which the approved investment company may allocate
107 to its investors in its discretion. Any remaining growth capital may be
108 awarded by the department to new approved companies.

109 8. Application fees submitted to the department shall be credited
110 to the show me rural jobs fund. No other fee shall be charged for the
111 administration of tax credits by the department or the department of
112 economic development.

620.1954. 1. There is hereby allowed a nonrefundable tax credit
2 for taxpayers who make a credit-eligible capital contribution to an
3 approved investment company and who receive a tax credit certificate
4 issued under subsection 5 of section 620.1953. The credit may be
5 claimed against taxes imposed under section 375.916 or chapter 143,
6 148, or 153, excluding withholding tax imposed under sections 143.191
7 to 143.265. The credit shall not be sold, transferred, or allocated to any
8 other entity except an affiliate.

9 2. On the closing date, the taxpayer shall earn a vested credit
10 equal to the amount of the taxpayer's credit-eligible capital
11 contribution to the approved investment company as specified on the
12 tax credit certificate. The taxpayer may claim up to twenty percent of

13 the credit authorized under this section for each of the five tax years
14 beginning on or after July 1, 2019, exclusive of amounts carried
15 forward under subsection 3 of this section.

16 3. If the amount of the credit for a tax year exceeds the
17 taxpayer's tax liability for that year, the excess shall be carried
18 forward and claimed during the next five tax years. A taxpayer
19 claiming a credit under this section shall submit a copy of the tax
20 credit certificate with the taxpayer's return for each tax year the credit
21 is claimed.

22 4. The maximum amount of credits claimed in any one fiscal year
23 by all taxpayers shall not exceed fifteen million dollars, exclusive of
24 amounts carried forward under subsection 3 of this section.

620.1955. 1. The department of economic development shall
2 revoke a tax credit certificate issued under subsection 5 of section
3 620.1953 if any of the following occur with respect to an approved
4 investment company before it exits the program in accordance with
5 subsection 5 of this section:

6 (1) The approved investment company does not invest one
7 hundred percent of its growth capital in funding within two years of
8 the closing date;

9 (2) The approved investment company, after investing one
10 hundred percent of its growth capital in funding, fails to maintain that
11 investment for the five years after the closing date. An investment that
12 is sold or repaid, in whole or in part, shall be deemed maintained if the
13 approved investment company reinvests an amount equal to the
14 returned or recovered portion, excluding any profits realized, in other
15 funding within twelve months of the receipt of the returned or
16 recovered portion. Amounts received periodically by an approved
17 investment company shall be deemed continually invested in funding
18 if the amounts are reinvested in funding for one or more rural business
19 concerns by the end of the following calendar year;

20 (3) The approved investment company, before exiting the
21 program, makes a distribution or payment that results in the approved
22 investment fund having less than one hundred percent of its growth
23 capital invested in fundings or available for investment in fundings and
24 held as cash or other marketable securities;

25 **(4) The approved investment company invests more than twenty**
26 **percent of its growth capital in the same rural business concern,**
27 **including amounts invested in affiliates of the rural business concern;**
28 **or**

29 **(5) The approved investment company invests funding in a rural**
30 **business concern that, directly or indirectly through an affiliate, owns,**
31 **has the right to acquire an ownership interest, makes a loan to, or**
32 **makes an investment in the approved investment company, an affiliate**
33 **of the approved investment company, or an investor in the approved**
34 **investment company. This subsection shall not apply to investments in**
35 **publicly traded securities by a rural business concern or an owner or**
36 **affiliate of such rural business concern. For purposes of this**
37 **subdivision, an approved investment company shall not be considered**
38 **an affiliate of a rural business concern solely as a result of its funding.**

39 **2. Before revoking one or more tax credit certificates under this**
40 **division, the department of economic development shall notify the**
41 **approved investment company of the reasons for the pending**
42 **revocation. The approved investment company shall have ninety days**
43 **from the date of such notice to correct the violations to the satisfaction**
44 **of the department of economic development and avoid revocation of the**
45 **tax credit certificate. The approved investment company shall be**
46 **charged five thousand dollars per day for each day taken to correct the**
47 **violations, and such amounts shall be deposited in the show me rural**
48 **jobs fund.**

49 **3. If the department of economic development revokes a tax**
50 **credit certificate, the department of revenue shall make an assessment**
51 **for the amount of the credit claimed by the certificate holder before the**
52 **certificate was revoked.**

53 **4. If tax credit certificates are revoked under this section, the**
54 **associated growth capital and credit-eligible capital contributions do**
55 **not count toward the limit on total growth capital and credit-eligible**
56 **capital contributions described under subsection 2 of section**
57 **620.1953. The department of economic development shall first award**
58 **reverted growth capital pro rata to each approved investment company**
59 **that was awarded less than its requested growth capital. Any**
60 **remaining growth capital may be awarded by the department of**

61 economic development to new approved investment companies.

62 5. After five years of the closing date, an approved investment
63 company shall be allowed to leave the program if none of the approved
64 investments company's tax credit certificates were revoked or are
65 pending revocation. The department of economic development shall
66 release an approved investment company from the program and the
67 regulations of this act within thirty days of receiving a request to exit.

68 6. If the actual revenue impact from its funding through the date
69 of the proposed distribution is:

70 (1) Less than sixty percent of the amount projected in the
71 approved investment fund's business plan filed as part of its
72 application for certification, then the state shall receive thirty percent
73 of any distribution or payment to an equity holder in an approved
74 investment fund in excess of the sum of the amount of equity capital
75 invested in the approved investment fund by such equity holder and an
76 amount equal to any projected increase in the equity holder's federal
77 or state tax liability, including penalties and interest, related to the
78 equity holder's ownership, management, or operation of the approved
79 investment fund;

80 (2) Greater than sixty percent but less than one hundred percent
81 of the amount projected in the approved investment fund's business
82 plan filed as part of its application for certification, then the state shall
83 receive fifteen percent of any distribution or payment to an equity
84 holder in an approved investment fund in excess of the sum of the
85 amount of equity capital invested in the approved investment fund by
86 such equity holder and an amount equal to any projected increase in
87 the equity holder's federal or state tax liability, including penalties and
88 interest, related to the equity holder's ownership, management, or
89 operation of the approved investment fund; or

90 (3) Equal to or greater than the amount projected in the
91 approved investment fund's business plan filed as part of its
92 application for certification, then the state shall receive zero percent
93 of any distribution or payment to an equity holder in an approved
94 investment fund in excess of the sum of the amount of equity capital
95 invested in the approved investment fund by such equity holder and an
96 amount equal to any projected increase in the equity holder's federal

97 or state tax liability, including penalties and interest, related to the
98 equity holder's ownership, management, or operation of the approved
99 investment fund.

100 7. The department of economic development shall not revoke a
101 tax credit certificate due to any actions of an approved investment
102 company that occur after the date the department of economic
103 development acknowledges an approved investment company's exit
104 from the program.

620.1956. 1. Each approved investment company shall submit a
2 report to the department of economic development and the department
3 on or before the fifth business day after the second anniversary of the
4 closing date containing:

5 (1) The approved investment company's bank statements
6 evidencing each funding;

7 (2) The name and location of each business receiving funding,
8 including evidence that the business qualified as a rural business
9 concern at the time the investment was made; and

10 (3) The number of employment positions created or retained as
11 a result of the approved investment company's fundings as of
12 December thirty-first of the preceding year;

13 2. On or before April thirtieth of each year following the year in
14 which the report required under subsection 1 of this section is due, the
15 approved investment company shall submit an annual report to the
16 department of economic development and the department containing:

17 (1) The number of employment positions created or retained as
18 a result of the approved investment company's fundings as of December
19 thirty-first of the preceding calendar year;

20 (2) The average annual salary of such positions; and

21 (3) Any other information required by the department.

22 3. The department of revenue and the department may
23 promulgate rules to implement the provisions of the show me rural jobs
24 act. Any rule or portion of a rule, as that term is defined in section
25 536.010, that is created under the authority delegated in this section
26 shall become effective only if it complies with and is subject to all of
27 the provisions of chapter 536 and, if applicable, section 536.028. This
28 section and chapter 536 are nonseverable, and if any of the powers

29 vested with the general assembly pursuant to chapter 536 to review, to
30 delay the effective date, or to disapprove and annul a rule are
31 subsequently held unconstitutional, then the grant of rulemaking
32 authority and any rule proposed or adopted after August 28, 2017, shall
33 be invalid and void.

34 4. Under section 23.253 of the Missouri sunset act:

35 (1) The provisions of the new program authorized under sections
36 620.1950 to 620.1958 shall automatically sunset on December thirty-first
37 six years after the effective date, unless reauthorized by an act of the
38 general assembly;

39 (2) If such program is reauthorized, the program authorized
40 under this section shall automatically sunset on December thirty-first
41 six years after the effective date of the reauthorization of this section;
42 and

43 (3) This section shall terminate on September first of the
44 calendar year immediately following the calendar year in which the
45 program authorized under this section is sunset. However, nothing in
46 this subsection shall preclude a taxpayer who makes a qualified equity
47 investment prior to sunset of this section under the provisions of
48 section 23.253 from claiming tax credits relating to such qualified
49 equity investment for each credit allowance date.

620.1957. An approved investment fund, before making a funding,
2 may request a written opinion from the department stating whether the
3 business in which it proposes to invest is a rural business concern. The
4 department shall respond to a request with its determination within
5 fifteen business days of receiving such request. If the department fails
6 to respond within fifteen business days of receiving the request, the
7 business for which determination is sought shall be considered a rural
8 business concern.

620.1958. Prior to funding a rural business concern with growth
2 capital, an approved investment company shall provide the department
3 with at least two of the following three documents for the department's
4 review:

5 (1) A letter from a commercial bank that conducts business in
6 the state that attests that the rural business concern sought and was
7 denied financing from such commercial bank similar to the funding

8 currently sought from the approved investment company;

9 (2) An affidavit from the president or chief officer of the rural
10 business concern stating that the company actively sought and was
11 unable to secure sufficient financing similar to the funding currently
12 sought from the approved investment company from other sources; or

13 (3) A letter from the state representative or state senator of the
14 district in which the principal operations of the rural business concern
15 is located that states such elected official's support for the funding.

16 The department shall review such documents and shall provide notice
17 of approval or denial to the approved investment company within
18 fifteen days. Any funding not approved or denied within such fifteen-
19 day period shall be deemed approved.

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Bill

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