

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 879

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time January 11, 2016, and ordered printed.

Read 2nd time January 20, 2016, and referred to the Committee on Jobs, Economic Development and Local Government.

Reported from the Committee February 4, 2016, with recommendation that the bill do pass.

Taken up for Perfection February 24, 2016. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

5741S.01P

AN ACT

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

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

Section A. Section 620.2005, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 620.2005 and 620.2007, to read as follows:

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

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

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

(3) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating

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

16 employees from a Missouri county with a higher county average wage, the
17 company shall obtain the endorsement of the governing body of the community
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;

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 an average of at least thirty-five hours per week for a
34 twelve-month period, and one for which the qualified company offers health
35 insurance and pays at least fifty percent of such insurance premiums. An
36 employee that spends less than fifty percent of the employee's work time at the
37 facility shall be considered to be located at a facility if the employee receives his
38 or her directions and control from that facility, is on the facility's payroll, one
39 hundred percent of the employee's income from such employment is Missouri
40 income, and the employee is paid at or above the applicable percentage of the
41 county average wage;

42 (9) "Local incentives", the present value of the dollar amount of direct
43 benefit received by a qualified company for a project facility from one or more
44 local political subdivisions, but this term shall not include loans or other funds
45 provided to the qualified company that shall be repaid by the qualified company
46 to the political subdivision;

47 (10) "NAICS" or "NAICS industry classification", the classification
48 provided by the most recent edition of the North American Industry Classification
49 System as prepared by the Executive Office of the President, Office of
50 Management and Budget;

51 (11) "New capital investment", shall include costs incurred by the

52 qualified company at the project facility after acceptance by the qualified
53 company of the proposal for benefits from the department or the approval notice
54 of intent, whichever occurs first, for real or personal property, and may include
55 the value of finance or capital leases for real or personal property for the term of
56 such lease at the project facility executed after acceptance by the qualified
57 company of the proposal for benefits from the department or the approval of the
58 notice of intent;

59 (12) "New direct local revenue", the present value of the dollar amount of
60 direct net new tax revenues of the local political subdivisions likely to be
61 produced by the project over a ten-year period as calculated by the department,
62 excluding local earnings tax, and net new utility revenues, provided the local
63 incentives include a discount or other direct incentives from utilities owned or
64 operated by the political subdivision;

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

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

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

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

78 (17) "Program", the Missouri works program established in sections
79 620.2000 to 620.2020;

80 (18) "Project facility", the building or buildings used by a qualified
81 company at which new or retained jobs and any new capital investment are or
82 will be located. A project facility may include separate buildings located within
83 sixty miles of each other such that their purpose and operations are interrelated;
84 provided that where the buildings making up the project facility are not located
85 within the same county, the average wage of the new payroll shall exceed the
86 applicable percentage of the highest county average wage among the counties in
87 which the buildings are located. Upon approval by the department, a subsequent

88 project facility may be designated if the qualified company demonstrates a need
89 to relocate to the subsequent project facility at any time during the project period;

90 (19) "Project facility base employment", the greater of the number of
91 full-time employees located at the project facility on the date of the notice of
92 intent or, for the twelve-month period prior to the date of the notice of intent, the
93 average number of full-time employees located at the project facility. In the event
94 the project facility has not been in operation for a full twelve-month period, the
95 average number of full-time employees for the number of months the project
96 facility has been in operation prior to the date of the notice of intent;

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

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

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

110 (23) "Qualified company", a firm, partnership, joint venture, association,
111 private or public corporation whether organized for profit or not, or headquarters
112 of such entity registered to do business in Missouri that is the owner or operator
113 of a project facility, certifies that it offers health insurance to all full-time
114 employees of all facilities located in this state, and certifies that it pays at least
115 fifty percent of such insurance premiums. **The term "qualified company"**
116 **shall include the United States Department of Defense, subject to the**
117 **requirements of section 620.2007.** For the purposes of sections 620.2000 to
118 620.2020, the term "qualified company" shall not include:

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

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

- 124 (c) Food and drinking places (NAICS subsector 722);
- 125 (d) Public utilities (NAICS 221 including water and sewer services);
- 126 (e) Any company that is delinquent in the payment of any nonprotested
- 127 taxes or any other amounts due the state or federal government or any other
- 128 political subdivision of this state;
- 129 (f) Any company requesting benefits for retained jobs that has filed for or
- 130 has publicly announced its intention to file for bankruptcy protection. However,
- 131 a company that has filed for or has publicly announced its intention to file for
- 132 bankruptcy may be a qualified company provided that such company:
- 133 a. Certifies to the department that it plans to reorganize and not to
- 134 liquidate; and
- 135 b. After its bankruptcy petition has been filed, it produces proof, in a form
- 136 and at times satisfactory to the department, that it is not delinquent in filing any
- 137 tax returns or making any payment due to the state of Missouri, including but
- 138 not limited to all tax payments due after the filing of the bankruptcy petition and
- 139 under the terms of the plan of reorganization. Any taxpayer who is awarded
- 140 benefits under this subsection and who files for bankruptcy under Chapter 7 of
- 141 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the
- 142 department and shall forfeit such benefits and shall repay the state an amount
- 143 equal to any state tax credits already redeemed and any withholding taxes
- 144 already retained;
- 145 (g) Educational services (NAICS sector 61);
- 146 (h) Religious organizations (NAICS industry group 8131);
- 147 (i) Public administration (NAICS sector 92);
- 148 (j) Ethanol distillation or production;
- 149 (k) Biodiesel production; or
- 150 (l) Health care and social services (NAICS sector 62). Notwithstanding
- 151 any provision of this section to the contrary, the headquarters, administrative
- 152 offices, or research and development facilities of an otherwise excluded business
- 153 may qualify for benefits if the offices or facilities serve a multistate territory. In
- 154 the event a national, state, or regional headquarters operation is not the
- 155 predominant activity of a project facility, the jobs and investment of such
- 156 operation shall be considered eligible for benefits under this section if the other
- 157 requirements are satisfied;
- 158 (24) "Related company", shall mean:
- 159 (a) A corporation, partnership, trust, or association controlled by the

160 qualified company;

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

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

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

170 b. Ownership of at least fifty percent of the capital or [profits] **profit**
171 interest in such qualified company if it is a partnership or association;

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

176 (25) "Related facility", a facility operated by the qualified company or a
177 related company located in this state that is directly related to the operations of
178 the project facility or in which operations substantially similar to the operations
179 of the project facility are performed;

180 (26) "Related facility base employment", the greater of the number of
181 full-time employees located at all related facilities on the date of the notice of
182 intent or, for the twelve-month period prior to the date of the notice of intent, the
183 average number of full-time employees located at all related facilities of the
184 qualified company or a related company located in this state;

185 (27) "Related facility base payroll", the annualized payroll of the related
186 facility base payroll or the total amount of taxable wages paid by the qualified
187 company to full-time employees of the qualified company located at a related
188 facility in the twelve months prior to the filing of the notice of intent. For
189 purposes of calculating the benefits under this program, the amount of related
190 facility base payroll shall increase each year based on an appropriate measure,
191 as determined by the department;

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

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

199 (30) "Withholding tax", the state tax imposed by sections 143.191 to
200 143.265. For purposes of this program, the withholding tax shall be computed
201 using a schedule as determined by the department based on average wages[;
202 and].

203 [(31)] 2. This section is subject to the provisions of section 196.1127.

620.2007. 1. A qualified company shall include the United States

2 Department of Defense if:

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

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

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

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

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

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

23 4. **If the United States Department of Defense is a co-applicant**
24 **for benefits as described in this section, the United States Department**
25 **of Defense shall remit withholding taxes for new jobs as provided for**
26 **by sections 143.191 to 143.265, but the department shall then pay the**
27 **industrial development corporation or the Missouri development**
28 **finance board, as applicable, an amount equal to the amount that the**
29 **qualified company would have otherwise retained or received under**

30 section 620.2010, including any tax credits.

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

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