

SECOND REGULAR SESSION

# SENATE BILL NO. 885

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

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

ADRIANE D. CROUSE, Secretary.

5599S.011

## AN ACT

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

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

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

**620.1950. Sections 620.1950 to 620.1956 shall be known and may be cited as the "Show Me Rural Jobs Act".**

**620.1951. As used in this section, the following terms mean:**

(1) "Affiliate", an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an entity certified or seeking certification as an approved investment company. For the purposes of sections 620.1950 to 620.1956, an entity is "controlled by" another entity if the controlling entity holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or has control over the day-to-day operations of the controlled entity by contract or by law;

(2) "Approved investment company", an entity approved by the department of agriculture 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 chapters 143, 148, or 153, excluding withholding tax imposed under sections 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 economic  
25 development;

26 (6) "Funding", any capital or equity investment in a rural  
27 business concern or any loan to a rural business concern with a term  
28 of at least one year;

29 (7) "Growth capital", capital investments in an approved  
30 investment company in the amount as stated on the notice issued under  
31 subsection 5 of section 620.1953 and comprised no more than sixty  
32 percent of credit-eligible capital contributions and at least forty  
33 percent of other investments of cash;

34 (8) "Operating company", excludes any publicly traded business  
35 and any business that does not derive or project to derive fifteen  
36 percent or more of annual revenue from the rental or sale of real  
37 property, except any business that is a special purpose entity  
38 principally owned by a principal user of that property formed solely for  
39 the purpose of renting, either directly or indirectly, or selling real  
40 property back to such principal user if such principal user does not  
41 derive fifteen percent or more of its gross annual revenue from the  
42 rental or sale of real property;

43 (9) "Principal business operations", the location where:

44 (a) At least sixty percent of the business' employees reside;

45 (b) The individuals who receive sixty percent of the business'  
46 payroll reside; or

47 (c) The business has agreed to relocate, using the proceeds of its  
48 funding so that it meets the requirements of paragraph (a) or (b) of this  
49 subdivision;

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

51 (a) Within a political subdivision having a population less than  
52 or equal to fifty thousand and outside the standard metropolitan  
53 statistical area of any adjacent community having a population greater  
54 than fifty thousand; or

55 (b) Determined to be "rural in character" by the director of the

56 department of agriculture;

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

58 (a) At the time of the initial investment in the company by an  
59 approved investment company, has not previously received or is not  
60 contemporaneously receiving funding from another approved  
61 investment company;

62 (b) Has its principal business operations in Missouri;

63 (c) Has fewer than two hundred fifty employees or had a federal  
64 adjusted gross income less than fifteen million dollars in the preceding  
65 tax year;

66 (d) Has its principal business operations located in a rural area;  
67 and

68 (e) Engages in industries related to manufacturing, plant  
69 sciences, technology, or agricultural technology or, if not engaged in  
70 such industries, the department of agriculture makes a determination  
71 that the targeted funding will be highly beneficial to the economic  
72 growth of the state.

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 620.1956. 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 620.1956.

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, 2016, the Department of  
2 Agriculture shall accept applications for approved investment  
3 companies. The application shall include:

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

5 (2) A copy of the applicant's or its affiliate's license as a rural  
6 business investment company under 7 U.S.C. Section 2009cc or as a  
7 small business investment company under 15 U.S.C. Section 681;

8           **(3) Evidence showing that the applicant or its affiliates have**  
9 **invested at least one hundred million dollars in operating companies**  
10 **and at least fifty million dollars in operating companies located in**  
11 **rural areas;**

12           **(4) An estimate of the number of jobs that will be created or**  
13 **retained in Missouri as a result of the applicant's funding;**

14           **(5) A business plan for the applicant's proposed funding**  
15 **prepared by a nationally recognized third-party independent economic**  
16 **forecasting firm, which includes a revenue impact assessment**  
17 **projecting state and local tax revenue under the applicant's ten-year**  
18 **business plan;**

19           **(6) An affidavit from each investor stating a commitment to make**  
20 **a credit-eligible capital contribution in support of the business plan**  
21 **and the amount of such credit-eligible capital contribution; and**

22           **(7) A nonrefundable application fee of five thousand dollars.**

23           **2. The department of agriculture shall make an application**  
24 **determination within thirty days of receipt in the order in which**  
25 **applications are received. The department of agriculture shall deem**  
26 **applications received on the same day as received**  
27 **simultaneously. Except as provided under subsection 4 of section**  
28 **620.1955, the department of agriculture shall not approve more than**  
29 **one hundred sixty-six million six hundred sixty-six thousand six**  
30 **hundred sixty-seven dollars in growth capital and not more than one**  
31 **hundred million dollars in credit-eligible capital contributions under**  
32 **this section. If requests for growth capital exceed this limitation, the**  
33 **department of agriculture shall proportionally reduce the growth**  
34 **capital and the credit-eligible capital contributions for each approved**  
35 **application as necessary to meet the limitation.**

36           **3. The department of agriculture shall deny an application**  
37 **submitted under this section if:**

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

39           **(2) The applicant does not satisfy all the requirements under**  
40 **subdivision (2) of subsection 1 of this section;**

41           **(3) The revenue impact assessment does not demonstrate that the**  
42 **applicant's business plan will result in a positive economic impact in**  
43 **Missouri over a ten-year period that exceeds the cumulative amount of**  
44 **tax credits the applicant seeks;**

45           **(4) The credit-eligible capital contributions exceed sixty percent**  
46 **of the total growth capital sought under the applicant's business plan;**  
47 **or**

48           **(5) The department of agriculture has already approved the**  
49 **maximum amount of growth capital and credit-eligible capital**  
50 **contributions allowed under subsection 2 of this section.**

51           **4. If the department of agriculture denies an application, the**  
52 **applicant may provide additional information within fifteen days of the**  
53 **notice of denial to the department of agriculture to complete, clarify,**  
54 **or cure defects in the application identified by the department of**  
55 **agriculture, and the department of agriculture shall reconsider the**  
56 **application and make a determination within fifteen days before**  
57 **approving any pending applications submitted after the denied**  
58 **applicant's original submission date.**

59           **5. The department of agriculture shall not deny an application**  
60 **or reduce the requested growth capital for reasons other than those**  
61 **described under subsections 2 and 3 of this section. If the department**  
62 **of agriculture approves an application, it shall provide written notice**  
63 **to the applicant stating:**

64           **(1) The applicant is an approved investment company;**

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

66           **(3) A tax credit certificate for each investor whose affidavit was**  
67 **included in the application.**

68 **The department of agriculture shall provide a copy of such notice to**  
69 **the department.**

70           **6. After receiving notice of approval, an approved investment**  
71 **company shall:**

72           **(1) Within sixty days:**

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

75           **(b) Collect one or more investments of cash that will compose**  
76 **forty percent of the approved investment company's growth capital.**

77 **At least ten percent of the approved investment company's growth**  
78 **capital shall be composed of equity investments contributed by**  
79 **affiliates of the approved investment company, including employees,**  
80 **officers, and directors of such affiliates; and**

81           **(2) Within sixty-five days, deliver to the department of**

82 agriculture and to the department documentation sufficient to prove  
83 that the amounts described under subdivision (1) of this subsection  
84 have been collected.

85       7. If the approved investment company fails to fully comply with  
86 the provisions of subsection 6 of this section, the approved investment  
87 company's approval shall lapse and the corresponding growth capital  
88 and credit-eligible capital contributions under this division will not  
89 count toward the limits on total growth capital and credit-eligible  
90 capital contributions under subsection 2 of this section. The  
91 department of agriculture shall first award lapsed growth capital pro  
92 rata to each approved investment company that was awarded less than  
93 its requested growth capital, which the approved investment company  
94 may allocate to its investors in its discretion. Any remaining growth  
95 capital may be awarded by the department of agriculture to new  
96 approved companies.

97       8. Application fees submitted to the department of agriculture  
98 shall be credited to the show me rural jobs fund. No other fee shall be  
99 charged for the administration of tax credits by the department of  
100 agriculture or the department under sections 620.1950 to 620.1956.

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 chapters 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 occurring after July 1, 2018, exclusive of amounts carried forward  
15 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 year by  
23 all taxpayers shall not exceed twenty million dollars, exclusive of  
24 amounts carried forward under subsection 3 of this section.

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

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

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

19 (3) The approved investment company, before exiting the  
20 program, makes a distribution or payment other than:

21 (a) A distribution of cash to one or more equity owners of the  
22 approved investment company to fully or partially offset a projected  
23 increase in the owner's federal or state tax liability, including any  
24 penalties and interest, related to the owner's ownership, management,  
25 or operation of the approved investment company;

26 (b) A distribution of cash as payment of interest and principal  
27 on the debt of the approved investment company, except to the extent  
28 the payment results in the approved investment company having less  
29 than one hundred percent of its eligible growth capital invested in  
30 fundings in Missouri or held in cash and other marketable securities;  
31 An approved investment company shall not make a distribution to a

32 person or entity that made a credit-eligible capital contribution prior  
33 to exiting the program;

34 (4) The approved investment company invests more than twenty  
35 percent of its growth capital in the same rural business concern,  
36 including amounts invested in affiliates of the rural business concern  
37 but excluding amounts reinvested in the rural business concern with  
38 repaid or redeemed fundings, provided such reinvestments shall not  
39 count toward the requirement of subsection 1 of this section; or

40 (5) The approved investment company invests funding in a rural  
41 business concern that, directly or indirectly through an affiliate, owns,  
42 has the right to acquire an ownership interest, makes a loan to, or  
43 makes an investment in the approved investment company, an affiliate  
44 of the approved investment company, or an investor in the approved  
45 investment company. This subdivision shall not apply to investments  
46 in publicly traded securities by a rural business concern or an owner  
47 or affiliate of such rural business concern. For purposes of this  
48 subdivision, an approved investment company shall not be considered  
49 an affiliate of a rural business concern solely as a result of its funding.

50 2. Before revoking one or more tax credit certificates under this  
51 section, the department shall notify the approved investment company  
52 of the reasons for the pending revocation. The approved investment  
53 company shall have ninety days from the date of such notice to correct  
54 the violations to the satisfaction of the department and avoid  
55 revocation of the tax credit certificate unless the approved investment  
56 company violated the provisions under subdivision (1) of subsection 1  
57 of this section. The approved investment company shall be charged five  
58 thousand dollars per day for each day taken to correct the violations,  
59 and such amounts shall be deposited in the show me rural jobs fund.

60 3. If the department revokes a tax credit certificate, the  
61 department of revenue shall make an assessment for the amount of the  
62 credit claimed by the certificate holder before the certificate was  
63 revoked.

64 4. If tax credit certificates are revoked under this section, the  
65 associated growth capital and credit-eligible capital contributions do  
66 not count toward the limit on total growth capital and credit-eligible  
67 capital contributions described under subsection 2 of section  
68 620.1953. The department shall first award reverted growth capital pro



69 rata to each approved investment company that was awarded less than  
70 its requested growth capital. Any remaining growth capital may be  
71 awarded by the department to new approved investment companies.

72 5. After five years of the closing date, an approved investment  
73 company shall be allowed to leave the program if none of the approved  
74 investment company's tax credit certificates were revoked or are  
75 pending revocation. The department shall release an approved  
76 investment company from the program and the regulations of this act  
77 within thirty days of receiving a request to exit.

78 6. If state and local tax revenues fall short of the amount stated  
79 in the approved investment company's application required under  
80 section 620.1953, the state shall receive a share of any distribution,  
81 except those listed in the provisions under subdivision (3) of subsection  
82 1 of this section and any distributions made to return equity capital  
83 invested in or capital loaned to the approved investment company that  
84 is not a credit-eligible capital contribution, in the following  
85 percentages:

86 (1) Fifteen percent if the shortfall is at least sixty percent of the  
87 amount stated; or

88 (2) Thirty percent if the shortfall is less than sixty percent of the  
89 amount stated.

90 7. The department shall not revoke a tax credit certificate due  
91 to any actions of an approved investment company that occur after the  
92 date the department acknowledges an approved investment company's  
93 exit from the program.

620.1956. 1. Each approved investment company shall submit a  
2 report to the department of agriculture and the department on or  
3 before the fifth business day after the second anniversary of the closing  
4 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 the  
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 agriculture 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. Any rule or portion of a rule, as that term is defined in section**  
23 **536.010, that is created under the authority delegated in sections**  
24 **620.1950 to 620.1956 shall become effective only if it complies with and**  
25 **is subject to all of the provisions of chapter 536 and, if applicable,**  
26 **section 536.028. This section and chapter 536 are nonseverable, and if**  
27 **any of the powers vested with the general assembly pursuant to chapter**  
28 **536 to review, to delay the effective date, or to disapprove and annul a**  
29 **rule are subsequently held unconstitutional, then the grant of**  
30 **rulemaking authority and any rule proposed or adopted after August**  
31 **28, 2016, shall be invalid and void.**

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