FIRST REGULAR SESSION

SENATE BILL NO. 282

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time January 16, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1361S.01I

AN ACT

To repeal sections 620.1878 and 620.1881, RSMo, and to enact in lieu thereof two new sections relating to the Missouri Quality Jobs Act.

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

Section A. Sections 620.1878 and 620.1881, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 620.1878 and 620.1881, to read as follows:

620.1878. For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) **"Approval", a document submitted by the department to the qualified company that states the benefits that may be provided by this program;**

(2) "Average wage", the new payroll divided by the number of new jobs;

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

[(3)**]** **(4)** "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 provisions of this subdivision to the contrary, for any qualified company which in conjunction with their project is relocating employees from a Missouri county with a higher**

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

county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated, or the county average wage for their project shall be the county average wage for the county from which employees are being relocated;

[(4)**]** **(5)** "Department", the Missouri department of economic development;

[(5)**]** **(6)** "Director", the director of the department of economic development;

[(6)**]** **(7)** "Employee", a person employed by a qualified company;

[(7) "Full-time equivalent employees", employees of the qualified company converted to reflect an equivalent of the number of full-time, year-round employees. The method for converting part-time and seasonal employees into an equivalent number of full-time, year-round employees shall be published in a rule promulgated by the department as authorized in section 620.1884;**]**

(8) "Full-time**[**, year-round**]** employee", an employee of the **qualified** company that **[**works**]** **is scheduled to work** an average of at least thirty-five hours per week for a twelve-month period, and one for which the qualified company offers health insurance and pays at least fifty percent of such insurance premiums;

(9) "High-impact project", a qualified company that, within two years from commencement of operations, creates one hundred or more new jobs;

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

(11) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group**,** or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

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

subdivision;

(13) "New investment", the purchase or leasing of new tangible assets to be placed in operation at the project facility, which will be directly related to the new jobs;

(14) "New job", the number of full-time[, year-round] employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time [equivalent] employees at related facilities below the related facility base employment**. No job that was created prior to the date of the notice of intent shall be deemed a new job**;

(15) "New payroll", [the amount of wages paid by a qualified company to employees in new jobs] **the amount of taxable wages of full-time employees, excluding owners, located at the project facility that exceeds the project facility base payroll. If full-time employment at related facilities is below the related facility base employment, any decrease in payroll for full-time employees at the related facilities below the related facility base payroll shall also be subtracted to determine new payroll**;

(16) "Notice of intent", a form developed by the department, completed by the qualified company and submitted to the department which states the qualified company's intent to hire new jobs and request benefits under this program;

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

(18) "Program", the Missouri quality jobs program provided in sections 620.1875 to 620.1890;

(19) "Project facility", the building used by a qualified company at which the new jobs and new investment will be located. A project facility may include separate buildings that are located within one mile of each other such that their purpose and operations are interrelated;

(20) "Project facility base employment", **the greater of the number of full-time employees located at the project facility on the date of the notice of intent or** for the twelve-month period prior to the date of the [proposal] **notice of intent**, the average number of full-time [equivalent] employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, [project facility base employment is] the average number of full-time [equivalent] employees for the number of

months the project facility has been in operation prior to the date of the [proposal] **notice of intent**;

(21) **"Project facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at the project facility in the twelve months prior to the notice of intent, not including the payroll of owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For the purposes of calculating the benefits under this program, the amount of base payroll shall increase each year based on an appropriate measure, as determined by the department;**

(22) "Project period", the time period that the benefits are provided to a qualified company;

[(22) "Proposal", a document submitted by the department to the qualified company that states the benefits that may be provided by this program. The effective date of such proposal cannot be prior to the commencement of operations. The proposal shall not offer benefits regarding any jobs created prior to its effective date unless the proposal is for a job retention project;**]**

(23) "Qualified company", a firm, partnership, joint venture, association, private or public corporation whether organized for profit or not, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility**, offers health insurance to all full-time employees of all facilities located in this state, and pays at least fifty percent of such insurance premiums**. For the purposes of sections 620.1875 to 620.1890, the term "qualified company" shall not include:

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

(b) Retail trade establishments (NAICS sectors 44 and 45);

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

(d) **[**Utilities regulated by the Missouri public service commission**] Utility services including but not limited to electric, gas, water, sewer, cable, and telephone**;

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

(f) Any company that has filed for or has publicly announced its intention to file for bankruptcy protection;

(g) Educational services (NAIC sector 61);

(h) Religious organizations (NAIC industry group 8131); or

(i) Public administration (NAIC sector 92);

(24) "Related company" means:

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

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

(c) Corporations, partnerships, trusts or associations controlled by an individual, corporation, partnership, trust or association in control of the qualified company. As used in this subdivision, **[**"**]**control of a corporation**[**"**]** shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, **[**"**]**control of a partnership or association**[**"**]** shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, **[**"**]**control of a trust**[**"**]** shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust, and ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

(25) "Related facility", a facility operated by the qualified company or a related company located in this state that is directly related to the operations of the project facility;

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

(27) **"Related facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at a related facility in the twelve months prior to the filing of the notice of intent, not including the payroll of owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For the purposes of calculating the benefits under this program, the amount of related facility base payroll shall increase each year based on an appropriate**

measure, as determined by the department;

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

[(28)**]** **(29)** "Small and expanding business project", a qualified company that within two years of the date of the **[**proposal**]** **approval** creates a minimum of twenty new jobs if the project facility is located in a rural area or a minimum of forty new jobs if the project facility is not located in a rural area and creates fewer than one hundred new jobs regardless of the location of the project facility;

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

[(30)**]** **(31)** "Technology business project", a qualified company that within two years of the date of the **[**proposal**]** **approval** creates a minimum of ten new jobs **[**with at least seventy-five percent of the new jobs directly involved**]** in the operations of a technology company as determined by a regulation promulgated by the department under the provisions of section 620.1884 **[**and**]** **or** classified by NAICS codes;

[(31)**]** **(32)** "Withholding tax", the state tax imposed by sections 143.191 to 143.265, RSMo. **The withholding tax shall be computed using a schedule, as determined by the department based on average wages.**

620.1881. 1. The department of economic development shall respond within thirty days to a company who provides a notice of intent with either **[**a proposal**]** **an approval** or a rejection of the notice of intent. Failure to respond on behalf of the department of economic development shall result in the notice of intent being deemed **[**a proposal**]** **an approval** for the purposes of this section.A qualified company who is provided **[**a proposal**]** **an approval** for a project shall be allowed a benefit as provided in this program in the amount and duration provided in this section. A qualified company may receive additional periods for subsequent new jobs at the same facility after the full initial period if the minimum thresholds are met as set forth in sections 620.1875 to 620.1890. There is no limit on the number of periods a qualified company may participate in the program, as long as the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program or other state programs. A qualified company may elect to file a notice of intent to start a new project period concurrent with an existing project period if the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program and other state programs; however, the qualified company may not receive any further benefit under the original [proposal] **approval** for jobs created after the date of the new notice of intent, and any jobs created before the new notice of intent may not be included as new jobs for the purpose of benefit calculation in relation to the new [proposal] **approval**.

2. Notwithstanding any provision of law to the contrary, any qualified company that is awarded benefits under this program may not [also] **simultaneously** receive tax credits or exemptions under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, [for the same new jobs] at the **same** project facility. The benefits available to the company under any other state programs for which the company is eligible and which utilize withholding tax from the new jobs of the company must first be credited to the other state program before the withholding retention level applicable under the Missouri quality jobs act will begin to accrue. These other state programs include, but are not limited to, the new jobs training program under sections 178.892 to 178.896, RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under sections 99.915 to 99.980, RSMo. If any qualified company also participates in the new jobs training program in sections 178.892 to 178.896, RSMo, the company shall retain no withholding tax, but the department shall issue a refundable tax credit for the full amount of benefit allowed under this subdivision. **The calendar year annual maximum amount of tax credits that may be issued to a qualifying company that also participates in the new job training program shall be increased by an amount equivalent to the withholding tax retained by that company under the new jobs training program. However, if the combined benefits of the quality jobs training program and the new jobs training program exceed the projected state benefit of the project, as determined by the department of economic development through a cost-benefit analysis, the increase in the maximum tax credits shall be limited to the amount that would not cause the combined benefits to exceed the projected state benefit.**

3. The types of projects and the amount of benefits to be provided are:

(1) Small and expanding business projects: in exchange for the consideration provided by the new tax revenues and other economic **[**stimulus**]** **stimuli** that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to the withholding tax **as calculated under subdivision (32) of section 620.1878** from the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, for a period of three years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds the county average wage or for a period of five years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds one hundred twenty percent of the county average wage;

(2) Technology business projects: in exchange for the consideration provided by the new tax revenues and other economic **[**stimulus**]** **stimuli** that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to a maximum of five percent of new payroll for a period of five years from the date the required number of jobs were created from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, if the average wage of the new payroll equals or exceeds the county average wage. An additional one-half percent of new payroll may be added to the five percent maximum if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located, plus an additional one-half percent of new payroll may be added if the average wage of the new payroll in any year exceeds one hundred forty percent of the average wage in the county in which the project facility is located. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is five hundred thousand dollars;

(3) High impact projects: in exchange for the consideration provided by the new tax revenues and other economic **[**stimulus**]** **stimuli** that will be

generated by the new jobs created by the program, a qualified company may retain an amount from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, equal to three percent of new payroll for a period of five years from the date the required number of jobs were created if the average wage of the new payroll equals or exceeds the county average wage of the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be three and one-half percent of new payroll if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be four percent of new payroll if the average wage of the new payroll in any year exceeds one hundred forty percent of the county average wage in the county in which the project facility is located. An additional one percent of new payroll may be added to these percentages if local incentives equal between ten percent and twenty-four percent of the new direct local revenue; an additional two percent of new payroll is added to these percentages if the local incentives equal between twenty-five percent and forty-nine percent of the new direct local revenue; or an additional three percent of payroll is added to these percentages if the local incentives equal fifty percent or more of the new direct local revenue. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is seven hundred fifty thousand dollars. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a project or combination of projects may be increased up to one million dollars **if the number of new jobs will exceed five hundred and** if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the project;

(4) Job retention projects: a qualified company may receive a tax credit for the retention of jobs in this state, provided the qualified company and the project meets all of the following conditions:

(a) For each of the twenty-four months preceding the year in which application for the program is made the qualified company must have maintained at least one thousand full-time**[**, year-round**]** employees at the employer's site in the state at which the jobs are based, and the average wage of such employees must meet or exceed the county average wage;

(b) The qualified company retained at the project facility the level of full-time**[**, year-round**]** employees that existed in the taxable year immediately preceding the year in which application for the program is made;

(c) The qualified company is considered to have a significant statewide effect on the economy, and has been determined to represent a substantial risk of relocation from the state by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development;

(d) The qualified company in the project facility will cause to be invested a minimum of seventy million dollars in new investment prior to the end of two years or will cause to be invested a minimum of thirty million dollars in new investment prior to the end of two years and maintain an annual payroll of at least seventy million dollars during each of the years for which a credit is claimed; and

(e) The local taxing entities shall provide local incentives of at least fifty percent of the new direct local revenues created by the project over a ten-year period. The quality jobs advisory task force may recommend to the department of economic development that appropriate penalties be applied to the company for violating the agreement. The amount of the job retention credit granted may be equal to up to fifty percent of the amount of withholding tax generated by the full-time**[**, year-round**]** jobs at the project facility for a period of five years. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a job retention project or combination of job retention projects shall be seven hundred fifty thousand dollars per year, but the maximum amount may be increased up to one million dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the job retention project. In no event shall the total amount of all tax credits issued for the entire job retention program under this subdivision exceed three million dollars annually. Notwithstanding the above, no tax credits shall be issued for job retention projects approved by the department after August 30, 2007.

4. The qualified company shall provide an annual report of the number of jobs and such other information as may be required by the department to document the basis for the benefits of this program. The department may withhold the approval of any benefits until it is satisfied that proper documentation has been provided, and shall reduce the benefits to reflect any reduction in full-time[, year-round] employees **or new payroll. Upon approval by the department, the qualified company may begin the retention of the withholding taxes when it reaches the minimum number of new jobs and the average wage exceeds the county average wage. Tax credits, if any, may be issued upon satisfaction by the department that the qualified company has exceeded the county average wage and the minimum number of new jobs. In such annual report, if the average wage is below the county average wage, the qualified company has not maintained the employee insurance as required, or if the number of new jobs is below the minimum, the qualified company shall not receive tax credits or retain the withholding tax for the balance of the benefit period. In the case of a qualified company that initially filed a notice of intent and received an approval from the department for high impact benefits, and the minimum number of new jobs in an annual report is below the minimum for high impact projects, the company shall not receive tax credits for the balance of the benefit period, but may continue to retain the withholding taxes if it otherwise meets the requirements of a small and expanding business under this program**.

5. The maximum calendar year annual tax credits issued for the entire program shall not exceed [twelve] **twenty-four** million dollars. [Notwithstanding any provision of law to the contrary, the maximum annual tax credits authorized

under section 135.535, RSMo, are hereby reduced from ten million dollars to eight million dollars, with the balance of two million dollars transferred to this program.**]** There shall be no limit on the amount of withholding taxes that may be retained by approved companies under this program.

6. The department shall allocate the annual tax credits based on the date of the **[**proposal**]** **approval**, reserving such tax credits based on the department's best estimate of new jobs and new payroll of the project, and the other factors in the determination of benefits of this program. However, the annual issuance of tax credits is subject to the annual verification of the actual new payroll. The allocation of tax credits for the period assigned to a project shall expire if, within two years from the date of commencement of operations, or **[**proposal**]** **approval** if applicable, the minimum thresholds have not been achieved. The qualified company may retain authorized amounts from the withholding tax under this section once the minimum new jobs thresholds are met for the duration of the project period. No benefits shall be provided under this program until the qualified company meets the minimum new jobs thresholds. In the event the qualified company does not meet the minimum new job threshold, the qualified company may submit a new notice of intent or the department may provide a new **[**proposal**]** **approval** for a new project of the qualified company at the project facility or other facilities.

7. For a qualified company with flow-through tax treatment to its members, partners, or shareholders, the tax credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the qualified company's tax period.

8. Tax credits may be claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed within one year of the close of the taxable year for which they were issued.

9. Tax credits authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department.

10. **Prior to the issuance of any tax credits, the department shall verify through the department of revenue that the tax credit applicant does not owe any delinquent income, sales, or use taxes, or interest or penalties on such taxes, and through the department of insurance that**

the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that at issuance credits shall be first applied to the delinquency, and any amount issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance concludes that a taxpayer is delinquent after June fifteenth but before July first of any year, and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all available credits towards a tax delinquency, the administering agency shall notify the appropriate department, and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of the law.

11. The director of revenue shall issue a refund to the qualified company to the extent that the amount of credits allowed in this section exceeds the amount of the qualified company's income tax.

[11.**]** **12.** An employee of a qualified company will receive full credit for the amount of tax withheld as provided in section **[**143.221**]** **143.211**, RSMo.

[12.**]** **13.** If any provision of sections 620.1875 to 620.1890 or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of these sections which can be given effect without the invalid provisions or application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared severable.

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