

FIRST REGULAR SESSION

# SENATE BILL NO. 292

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 3, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1691S.011

## AN ACT

To repeal section 620.1881, RSMo, and to enact in lieu thereof three new sections relating to certain tax credit programs administered by the department of economic development.

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

Section A. Section 620.1881, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 348.273, 348.274, and 620.1881, to read as follows:

**348.273. As used in sections 348.273 and 348.274, the following terms shall mean:**

**(1) "Department", the Missouri department of economic development;**

**(2) "Distressed community", as defined in section 135.530, RSMo;**

**(3) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;**

**(4) "Investor":**

**(a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or**

**(b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated**

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

16 for the purpose of making preseed and seed stage investments in start-  
17 up companies, and is approved by the department;

18 (5) "Qualified Missouri business", an independently owned and  
19 operated business which is headquartered and located in this state and  
20 which is in need of venture capital. Such business shall have no more  
21 than two hundred employees, eighty percent of which are employed in  
22 this state. Such business shall be involved in commerce for the purpose  
23 of manufacturing, processing, or assembling products, conducting  
24 research and development, or providing services in interstate  
25 commerce but excluding retail, real estate, real estate development,  
26 insurance, and professional services provided by accountants, lawyers,  
27 or physicians. At the time approval is sought, such business shall be a  
28 small business concern that meets the requirements of the United  
29 States Small Business Administration's qualification size standards for  
30 its venture capital program, as defined in the Small Business  
31 Investment Act of 1958, as amended, and rules promulgated in 13 CFR  
32 121.301(c), as amended;

33 (6) "Qualified securities", securities that are not redeemable or  
34 repayable within seven years of issuance and that have been approved  
35 in form and substance by the department. Forms of such equity  
36 securities include:

37 (a) A general or limited partnership interest;

38 (b) Common stock;

39 (c) Preferred stock, with or without voting rights, without regard  
40 to seniority position, and whether or not convertible into common  
41 stock; or

42 (d) Convertible debt;

43 (7) "Rural area", any city, town, or village with fewer than fifteen  
44 thousand inhabitants and located in any county that is not part of a  
45 standard metropolitan statistical area as defined by the United States  
46 Department of Commerce or its successor agency. However, any such  
47 city, town, or village located in any county so defined as a standard  
48 metropolitan statistical area may be designated a rural area by the  
49 office of rural development if:

50 (a) A substantial number of persons in such county derive their  
51 income from agriculture;

52 (b) The county has only one city within the county having a

53 population of more than fifteen thousand and is classified as a standard  
54 metropolitan statistical area; and

55 (c) All other cities, towns, and villages in that county have a  
56 population of less than fifteen thousand.

348.274. 1. The department may authorize tax credits to  
2 encourage equity investment into technology-based early stage  
3 Missouri companies.

4 2. If a qualified Missouri business is approved by the  
5 department, the investors who contribute the first five hundred  
6 thousand dollars in equity investment in the qualified Missouri  
7 business may be issued a tax credit in the year the equity investment  
8 is made. The tax credit shall be in a total amount equal to thirty  
9 percent of such investors' equity investment in any qualified Missouri  
10 business, subject to the limitations set forth in subsection 5 of this  
11 section. However, if the qualified Missouri business invested in is  
12 located in a rural area or a distressed community, the investors may be  
13 issued a tax credit for forty percent of such investment, subject to the  
14 limitations set forth in subsection 5 of this section.

15 3. (1) Before an investor may be entitled to receive tax credits,  
16 as authorized by this section, such investor shall have made an equity  
17 investment in a qualified security of a qualified Missouri  
18 business. This business shall have been approved by the department  
19 as a qualified Missouri business prior to the date on which the cash  
20 investment was made. To be designated as a qualified Missouri  
21 business, a business shall make application to the department in  
22 accordance with the provisions of this section. Such application shall  
23 be in form and substance as required by the department but shall  
24 include at least the following:

25 (a) The name of the business and certified copies of the  
26 organizational documents of the business;

27 (b) A business plan, including a description of the business and  
28 the management, product, market, and financial plan of the business;

29 (c) A statement of the business innovative and proprietary  
30 technology, product, or service;

31 (d) A statement of the potential economic impact of the  
32 enterprise including the number, location, and types of jobs expected  
33 to be created;

34 (e) A description of the qualified securities to be issued, the  
35 consideration to be paid for the qualified securities, the amount of any  
36 tax credits requested, and the earliest year in which the tax credits  
37 may be redeemed;

38 (f) A statement of the amount, timing, and projected use of the  
39 proceeds to be raised from the proposed sale of qualified securities;  
40 and

41 (g) Other information as the department may request, such as  
42 the names, addresses, and taxpayer identification numbers of all  
43 investors who may qualify for the tax credit. Such list of investors who  
44 may qualify for the tax credits shall be amended as new qualified  
45 securities are sold or as any information on the list changes.

46 (2) No business shall be designated as a qualified Missouri  
47 business unless such business meets all of the following criteria:

48 (a) The business shall not have had annual gross revenues of  
49 more than three million dollars in the most recent tax year of the  
50 business;

51 (b) The business shall not have ownership interests including,  
52 but not limited to, common or preferred shares of stock that can be  
53 traded by the public via a stock exchange, electronic exchange, bulletin  
54 board, or other public market place on or before the date that a  
55 qualifying investment is made;

56 (c) The business shall not be engaged primarily in any one or  
57 more of the following enterprises:

58 a. The business of banking, savings and loan or lending  
59 institutions, credit or finance, or financial brokerage or investments;

60 b. Professional services, such as legal, accounting, or engineering  
61 services;

62 c. Governmental, charitable, religious, or trade organizations;

63 d. The ownership, development, brokerage, sales, or leasing of  
64 real estate;

65 e. Insurance;

66 f. Construction or construction management or contracting;

67 g. Business consulting or brokerage;

68 h. Any business engaged primarily as a passive business, having  
69 irregular or noncontinuous operations, or deriving substantially all of  
70 the income of the business from passive investments that generate

71 interest, dividends, royalties, or capital gains, or any business  
72 arrangements the effect of which is to immunize an investor from risk  
73 of loss;

74 i. Any Missouri certified capital formation company;

75 j. Any activity that is in violation of the law; and

76 k. Any business raising money primarily to purchase real estate,  
77 land, or fixtures;

78 (d) The business shall satisfy all other requirements of this  
79 section.

80 (3) The portions of documents and other materials submitted to  
81 the department that contain trade secrets shall be kept confidential  
82 and shall be maintained in a secured environment by the director of  
83 the department. For the purposes of this section, such portions of  
84 documents and other materials shall mean any customer list, any  
85 formula, compound, production data, or compilation of information on  
86 certain individuals within a commercial concern using such portions  
87 of documents and other material means to fabricate, produce, or  
88 compound an article of trade, or, any service having commercial value,  
89 which gives the user an opportunity to obtain a business advantage  
90 over competitors who do not know or use such service.

91 (4) A qualified Missouri business shall have the burden of proof  
92 to demonstrate to the department the qualifications of the business  
93 under this section and shall have the obligation to notify the  
94 department in a timely manner of any changes in the qualifications of  
95 the business or in the eligibility of investors to claim a tax credit for  
96 cash investment in a qualified security.

97 4. The designation of a business as a qualified Missouri business  
98 shall be made by the department, and such designation shall be  
99 renewed annually. A business shall be so designated if the department  
100 determines, based upon the application submitted by the business and  
101 any additional investigation the staff of the department shall make,  
102 that the following criteria have been or shall be satisfied:

103 (1) The business has a reasonable chance of success;

104 (2) The ability of investors in the business to receive tax credits  
105 for cash investments in qualified securities of the business is necessary  
106 because funding otherwise available for the business is not available  
107 on commercially reasonable terms;

108           **(3) The business has the reasonable potential to create**  
109 **measurable employment within the state;**

110           **(4) The business has an innovative and proprietary technology,**  
111 **product, and service;**

112           **(5) The existing owners of the business and other founders have**  
113 **made or are committed to make a substantial financial and time**  
114 **commitment to the business;**

115           **(6) The securities to be issued and purchased are qualified**  
116 **securities; and**

117           **(7) Binding commitments have been made by the business to the**  
118 **department for adequate reporting of financial data, including a**  
119 **requirement for an annual report, or, if required by the department, an**  
120 **annual audit of the financial and operational records of the business,**  
121 **the right of access to the financial records of the business, and the**  
122 **right of the department to record and publish normal and customary**  
123 **data and information related to the issuance of tax credits that are not**  
124 **otherwise determined to be trade or business secrets;**

125           **5. The department shall not issue tax credits of more than fifty**  
126 **thousand dollars to an investor per investment into a single, qualified**  
127 **Missouri company, or for tax credits totaling more than one hundred**  
128 **thousand dollars in a single year per investor. The total amount of tax**  
129 **credits that may be allowed under this section shall not exceed five**  
130 **million dollars per tax year.**

131           **6. This tax credit may be used in its entirety in the taxable year**  
132 **in which the equity investment is made or the credit may be carried**  
133 **forward for use in any of the next three consecutive tax years until the**  
134 **total amount of the credit is used. The tax credits may be sold,**  
135 **assigned, exchanged, or otherwise transferred.**

136           **7. Tax credits may be used against the tax otherwise due under**  
137 **chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo.**

138           **8. A qualified Missouri business for which credits have been**  
139 **issued that, within seven years of receiving tax credits under this**  
140 **section relocates its headquarters out of Missouri, ceases to employ**  
141 **eighty percent of its employees in Missouri, alters the principal nature**  
142 **of its operations, or divests itself of key assets shall upon demand by**  
143 **the department pay the state of Missouri an amount equal to the**  
144 **amount of credits issued to its contributors.**

145           **9. The reasonable costs of the administration of this section, the**  
146 **review of applications for certification as qualified Missouri businesses,**  
147 **and the issuance of tax credits authorized by this section shall be**  
148 **reimbursed through fees paid by the qualified Missouri businesses and**  
149 **the investors or the transferees of investors, according to a reasonable**  
150 **fee schedule adopted by the department.**

151           **10. In addition to reports by the businesses to the department,**  
152 **the department shall also provide in its annual report information on**  
153 **the marketing and use of the investor tax credits. This report shall**  
154 **include the following:**

155           **(1) The amount of tax credits used in the previous fiscal year**  
156 **including what percentage was claimed by individuals and what**  
157 **percentage was claimed by firms and other entities;**

158           **(2) The types of businesses that benefited from the tax credits;**  
159 **and**

160           **(3) Any aggregate job creation or capital investment in Missouri**  
161 **that resulted from the use of the tax credits for a period of five years**  
162 **beginning from the date on which the tax credits were awarded.**

163 **In addition, the annual report shall provide information regarding**  
164 **what businesses deriving a benefit from the tax credits remained in**  
165 **Missouri, what businesses ceased doing business, what businesses were**  
166 **purchased, and what businesses may have moved out-of-state and the**  
167 **reason for such move.**

620.1881. 1. The department of economic development shall respond  
2 within thirty days to a company who provides a notice of intent with either an  
3 approval or a rejection of the notice of intent. The department shall give  
4 preference to qualified companies and projects targeted at an area of the state  
5 which has recently been classified as a disaster area by the federal  
6 government. Failure to respond on behalf of the department of economic  
7 development shall result in the notice of intent being deemed an approval for the  
8 purposes of this section. A qualified company who is provided an approval for a  
9 project shall be allowed a benefit as provided in this program in the amount and  
10 duration provided in this section. A qualified company may receive additional  
11 periods for subsequent new jobs at the same facility after the full initial period  
12 if the minimum thresholds are met as set forth in sections 620.1875 to  
13 620.1890. There is no limit on the number of periods a qualified company may

14 participate in the program, as long as the minimum thresholds are achieved and  
15 the qualified company provides the department with the required reporting and  
16 is in proper compliance for this program or other state programs. A qualified  
17 company may elect to file a notice of intent to start a new project period  
18 concurrent with an existing project period if the minimum thresholds are  
19 achieved and the qualified company provides the department with the required  
20 reporting and is in proper compliance for this program and other state programs;  
21 however, the qualified company may not receive any further benefit under the  
22 original approval for jobs created after the date of the new notice of intent, and  
23 any jobs created before the new notice of intent may not be included as new jobs  
24 for the purpose of benefit calculation in relation to the new approval.

25           2. Notwithstanding any provision of law to the contrary, any qualified  
26 company that is awarded benefits under this program may not simultaneously  
27 receive tax credits or exemptions under sections 135.100 to 135.150, sections  
28 135.200 to 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, at the  
29 same project facility. The benefits available to the company under any other  
30 state programs for which the company is eligible and which utilize withholding  
31 tax from the new jobs of the company must first be credited to the other state  
32 program before the withholding retention level applicable under the Missouri  
33 quality jobs act will begin to accrue. These other state programs include, but are  
34 not limited to, the new jobs training program under sections 178.892 to 178.896,  
35 RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the  
36 real property tax increment allocation redevelopment act, sections 99.800 to  
37 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under  
38 sections 99.915 to 99.980, RSMo. If any qualified company also participates in  
39 the new jobs training program in sections 178.892 to 178.896, RSMo, the company  
40 shall retain no withholding tax, but the department shall issue a refundable tax  
41 credit for the full amount of benefit allowed under this subdivision. The calendar  
42 year annual maximum amount of tax credits which may be issued to a qualifying  
43 company that also participates in the new job training program shall be increased  
44 by an amount equivalent to the withholding tax retained by that company under  
45 the new jobs training program. However, if the combined benefits of the quality  
46 jobs program and the new jobs training program exceed the projected state  
47 benefit of the project, as determined by the department of economic development  
48 through a cost-benefit analysis, the increase in the maximum tax credits shall be  
49 limited to the amount that would not cause the combined benefits to exceed the

50 projected state benefit. Any taxpayer who is awarded benefits under this  
51 program who knowingly hires individuals who are not allowed to work legally in  
52 the United States shall immediately forfeit such benefits and shall repay the  
53 state an amount equal to any state tax credits already redeemed and any  
54 withholding taxes already retained.

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

56 (1) Small and expanding business projects: in exchange for the  
57 consideration provided by the new tax revenues and other economic stimuli that  
58 will be generated by the new jobs created by the program, a qualified company  
59 may retain an amount equal to the withholding tax as calculated under  
60 subdivision (33) of section 620.1878 from the new jobs that would otherwise be  
61 withheld and remitted by the qualified company under the provisions of sections  
62 143.191 to 143.265, RSMo, for a period of three years from the date the required  
63 number of new jobs were created if the average wage of the new payroll equals  
64 or exceeds the county average wage or for a period of five years from the date the  
65 required number of new jobs were created if the average wage of the new payroll  
66 equals or exceeds one hundred twenty percent of the county average wage;

67 (2) Technology business projects: in exchange for the consideration  
68 provided by the new tax revenues and other economic stimuli that will be  
69 generated by the new jobs created by the program, a qualified company may  
70 retain an amount equal to a maximum of five percent of new payroll for a period  
71 of five years from the date the required number of jobs were created from the  
72 withholding tax of the new jobs that would otherwise be withheld and remitted  
73 by the qualified company under the provisions of sections 143.191 to 143.265,  
74 RSMo, if the average wage of the new payroll equals or exceeds the county  
75 average wage. An additional one-half percent of new payroll may be added to the  
76 five percent maximum if the average wage of the new payroll in any year exceeds  
77 one hundred twenty percent of the county average wage in the county in which  
78 the project facility is located, plus an additional one-half percent of new payroll  
79 may be added if the average wage of the new payroll in any year exceeds one  
80 hundred forty percent of the average wage in the county in which the project  
81 facility is located. The department shall issue a refundable tax credit for any  
82 difference between the amount of benefit allowed under this subdivision and the  
83 amount of withholding tax retained by the company, in the event the withholding  
84 tax is not sufficient to provide the entire amount of benefit due to the qualified  
85 company under this subdivision. The calendar year annual maximum amount of

86 tax credits that may be issued to any qualified company for a project or  
87 combination of projects is five hundred thousand dollars;

88 (3) High impact projects: in exchange for the consideration provided by  
89 the new tax revenues and other economic stimuli that will be generated by the  
90 new jobs created by the program, a qualified company may retain an amount from  
91 the withholding tax of the new jobs that would otherwise be withheld and  
92 remitted by the qualified company under the provisions of sections 143.191 to  
93 143.265, RSMo, equal to three percent of new payroll for a period of five years  
94 from the date the required number of jobs were created if the average wage of the  
95 new payroll equals or exceeds the county average wage of the county in which the  
96 project facility is located. The percentage of payroll allowed under this  
97 subdivision shall be three and one-half percent of new payroll if the average wage  
98 of the new payroll in any year exceeds one hundred twenty percent of the county  
99 average wage in the county in which the project facility is located. The  
100 percentage of payroll allowed under this subdivision shall be four percent of new  
101 payroll if the average wage of the new payroll in any year exceeds one hundred  
102 forty percent of the county average wage in the county in which the project  
103 facility is located. An additional one percent of new payroll may be added to  
104 these percentages if local incentives equal between ten percent and twenty-four  
105 percent of the new direct local revenue; an additional two percent of new payroll  
106 is added to these percentages if the local incentives equal between twenty-five  
107 percent and forty-nine percent of the new direct local revenue; or an additional  
108 three percent of payroll is added to these percentages if the local incentives equal  
109 fifty percent or more of the new direct local revenue. The department shall issue  
110 a refundable tax credit for any difference between the amount of benefit allowed  
111 under this subdivision and the amount of withholding tax retained by the  
112 company, in the event the withholding tax is not sufficient to provide the entire  
113 amount of benefit due to the qualified company under this subdivision. The  
114 calendar year annual maximum amount of tax credits that may be issued to any  
115 qualified company for a project or combination of projects is seven hundred fifty  
116 thousand dollars. The calendar year annual maximum amount of tax credit that  
117 may be issued to any qualified company for a project or combination of projects  
118 may be increased up to one million dollars if the number of new jobs will exceed  
119 five hundred and if such action is proposed by the department and approved by  
120 the quality jobs advisory task force established in section 620.1887; provided,  
121 however, until such time as the initial at-large members of the quality jobs

122 advisory task force are appointed, this determination shall be made by the  
123 director of the department of economic development. In considering such a  
124 request, the task force shall rely on economic modeling and other information  
125 supplied by the department when requesting the increased limit on behalf of the  
126 project;

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

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

135 (b) The qualified company retained at the project facility the level of  
136 full-time employees that existed in the taxable year immediately preceding the  
137 year in which application for the program is made;

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

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

150 (e) The local taxing entities shall provide local incentives of at least fifty  
151 percent of the new direct local revenues created by the project over a ten-year  
152 period.

153 The quality jobs advisory task force may recommend to the department of  
154 economic development that appropriate penalties be applied to the company for  
155 violating the agreement. The amount of the job retention credit granted may be  
156 equal to up to fifty percent of the amount of withholding tax generated by the  
157 full-time jobs at the project facility for a period of five years. The calendar year

158 annual maximum amount of tax credit that may be issued to any qualified  
159 company for a job retention project or combination of job retention projects shall  
160 be seven hundred fifty thousand dollars per year, but the maximum amount may  
161 be increased up to one million dollars if such action is proposed by the  
162 department and approved by the quality jobs advisory task force established in  
163 section 620.1887; provided, however, until such time as the initial at-large  
164 members of the quality jobs advisory task force are appointed, this determination  
165 shall be made by the director of the department of economic development. In  
166 considering such a request, the task force shall rely on economic modeling and  
167 other information supplied by the department when requesting the increased  
168 limit on behalf of the job retention project. In no event shall the total amount of  
169 all tax credits issued for the entire job retention program under this subdivision  
170 exceed three million dollars annually. Notwithstanding the above, no tax credits  
171 shall be issued for job retention projects approved by the department after August  
172 30, 2013;

173 (5) Small business job retention and flood survivor relief: a qualified  
174 company may receive a tax credit under sections 620.1875 to 620.1890 for the  
175 retention of jobs and flood survivor relief in this state for each job retained over  
176 a three-year period, provided that:

177 (a) The qualified company did not receive any state or federal benefits,  
178 incentives, or tax relief or abatement in locating its facility in a flood plain;

179 (b) The qualified company and related companies have fewer than one  
180 hundred employees at the time application for the program is made;

181 (c) The average wage of the qualified company's and related companies'  
182 employees must meet or exceed the county average wage;

183 (d) All of the qualified company's and related companies' facilities are  
184 located in this state;

185 (e) The facilities at the primary business site in this state have been  
186 directly damaged by floodwater rising above the level of a five hundred year flood  
187 at least two years, but fewer than eight years, prior to the time application is  
188 made;

189 (f) The qualified company made significant efforts to protect the facilities  
190 prior to any impending danger from rising floodwaters;

191 (g) For each year it receives tax credits under sections 620.1875 to  
192 620.1890, the qualified company and related companies retained, at the  
193 company's facilities in this state, at least the level of full-time, year-round

194 employees that existed in the taxable year immediately preceding the year in  
195 which application for the program is made; and

196 (h) In the years it receives tax credits under sections 620.1875 to  
197 620.1890, the company cumulatively invests at least two million dollars in capital  
198 improvements in facilities and equipment located at such facilities that are not  
199 located within a five hundred year flood plain as designated by the Federal  
200 Emergency Management Agency, and amended from time to time.

201 The amount of the small business job retention and flood survivor relief credit  
202 granted may be equal to up to one hundred percent of the amount of withholding  
203 tax generated by the full-time jobs at the project facility for a period of three  
204 years. The calendar year annual maximum amount of tax credit that may be  
205 issued to any qualified company for a small business job retention and survivor  
206 relief project shall be two hundred fifty thousand dollars per year, but the  
207 maximum amount may be increased up to five hundred thousand dollars if such  
208 action is proposed by the department and approved by the quality jobs advisory  
209 task force established in section 620.1887. In considering such a request, the  
210 task force shall rely on economic modeling and other information supplied by the  
211 department when requesting an increase in the limit on behalf of the small  
212 business job retention and flood survivor relief project. In no event shall the total  
213 amount of all tax credits issued for the entire small business job retention and  
214 flood survivor relief program under this subdivision exceed five hundred thousand  
215 dollars annually. Notwithstanding the provisions of this subdivision to the  
216 contrary, no tax credits shall be issued for small business job retention and flood  
217 survivor relief projects approved by the department after August 30, 2010.

218 4. The qualified company shall provide an annual report of the number  
219 of jobs and such other information as may be required by the department to  
220 document the basis for the benefits of this program. The department may  
221 withhold the approval of any benefits until it is satisfied that proper  
222 documentation has been provided, and shall reduce the benefits to reflect any  
223 reduction in full-time employees or new payroll. Upon approval by the  
224 department, the qualified company may begin the retention of the withholding  
225 taxes when it reaches the minimum number of new jobs and the average wage  
226 exceeds the county average wage. Tax credits, if any, may be issued upon  
227 satisfaction by the department that the qualified company has exceeded the  
228 county average wage and the minimum number of new jobs. In such annual  
229 report, if the average wage is below the county average wage, the qualified

230 company has not maintained the employee insurance as required, or if the  
231 number of new jobs is below the minimum, the qualified company shall not  
232 receive tax credits or retain the withholding tax for the balance of the benefit  
233 period. In the case of a qualified company that initially filed a notice of intent  
234 and received an approval from the department for high impact benefits and the  
235 minimum number of new jobs in an annual report is below the minimum for high  
236 impact projects, the company shall not receive tax credits for the balance of the  
237 benefit period but may continue to retain the withholding taxes if it otherwise  
238 meets the requirements of a small and expanding business under this program.

239         5. [The maximum calendar year annual tax credits issued for the entire  
240 program shall not exceed sixty million dollars.] Notwithstanding any provision  
241 of law to the contrary, the maximum annual tax credits authorized under section  
242 135.535, RSMo, are hereby reduced from ten million dollars to eight million  
243 dollars, with the balance of two million dollars transferred to this  
244 program. There shall be no limit on the amount of withholding taxes that may  
245 be retained by approved companies under this program.

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

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

265         8. Tax credits may be claimed against taxes otherwise imposed by

266 chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed  
267 within one year of the close of the taxable year for which they were issued, except  
268 as provided under subdivision (4) of subsection 3 of this section.

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

274           10. Prior to the issuance of tax credits, the department shall verify  
275 through the department of revenue, or any other state department, that the tax  
276 credit applicant does not owe any delinquent income, sales, or use tax or interest  
277 or penalties on such taxes, or any delinquent fees or assessments levied by any  
278 state department and through the department of insurance, financial institutions  
279 and professional registration that the applicant does not owe any delinquent  
280 insurance taxes. Such delinquency shall not affect the authorization of the  
281 application for such tax credits, except that at issuance credits shall be first  
282 applied to the delinquency and any amount issued shall be reduced by the  
283 applicant's tax delinquency. If the department of revenue or the department of  
284 insurance, financial institutions and professional registration, or any other state  
285 department, concludes that a taxpayer is delinquent after June fifteenth but  
286 before July first of any year and the application of tax credits to such delinquency  
287 causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall  
288 be granted thirty days to satisfy the deficiency in which interest, penalties, and  
289 additions to tax shall be tolled. After applying all available credits toward a tax  
290 delinquency, the administering agency shall notify the appropriate department  
291 and that department shall update the amount of outstanding delinquent tax owed  
292 by the applicant. If any credits remain after satisfying all insurance, income,  
293 sales, and use tax delinquencies, the remaining credits shall be issued to the  
294 applicant, subject to the restrictions of other provisions of law.

295           11. Except as provided under subdivision (4) of subsection 3 of this  
296 section, the director of revenue shall issue a refund to the qualified company to  
297 the extent that the amount of credits allowed in this section exceeds the amount  
298 of the qualified company's income tax.

299           12. An employee of a qualified company will receive full credit for the  
300 amount of tax withheld as provided in section 143.211, RSMo.

301           13. If any provision of sections 620.1875 to 620.1890 or application thereof

302 to any person or circumstance is held invalid, the invalidity shall not affect other  
303 provisions or application of these sections which can be given effect without the  
304 invalid provisions or application, and to this end, the provisions of sections  
305 620.1875 to 620.1890 are hereby declared severable.

✓

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