

SECOND REGULAR SESSION

# SENATE BILL NO. 879

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

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

ADRIANE D. CROUSE, Secretary.

5741S.011

## AN ACT

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

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

Section A. Section 620.2005, RSMo, is repealed and two new sections  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

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

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

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

8 (3) "County average wage", the average wages in each county as  
9 determined by the department for the most recently completed full calendar  
10 year. However, if the computed county average wage is above the statewide  
11 average wage, the statewide average wage shall be deemed the county average  
12 wage for such county for the purpose of determining eligibility. The department  
13 shall publish the county average wage for each county at least  
14 annually. Notwithstanding the provisions of this subdivision to the contrary, for  
15 any qualified company that in conjunction with their project is relocating  
16 employees from a Missouri county with a higher county average wage, the  
17 company shall obtain the endorsement of the governing body of the community  
18 from which jobs are being relocated or the county average wage for their project

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

19 shall be the county average wage for the county from which the employees are  
20 being relocated;

21 (4) "Department", the Missouri department of economic development;

22 (5) "Director", the director of the department of economic development;

23 (6) "Employee", a person employed by a qualified company, excluding:

24 (a) Owners of the qualified company unless the qualified company is  
25 participating in an employee stock ownership plan; or

26 (b) Owners of a noncontrolling interest in stock of a qualified company  
27 that is publicly traded;

28 (7) "Existing Missouri business", a qualified company that, for the  
29 ten-year period preceding submission of a notice of intent to the department, had  
30 a physical location in Missouri and full-time employees who routinely [perform]  
31 **performed** job duties within Missouri;

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

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

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

51 (11) "New capital investment", shall include costs incurred by the  
52 qualified company at the project facility after acceptance by the qualified  
53 company of the proposal for benefits from the department or the approval notice  
54 of intent, whichever occurs first, for real or personal property, and may include

55 the value of finance or capital leases for real or personal property for the term of  
56 such lease at the project facility executed after acceptance by the qualified  
57 company of the proposal for benefits from the department or the approval of the  
58 notice of intent;

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

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

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

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

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

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

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

90 (19) "Project facility base employment", the greater of the number of

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

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

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

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

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

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

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

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

125 (d) Public utilities (NAICS 221 including water and sewer services);

126 (e) Any company that is delinquent in the payment of any nonprotested

127 taxes or any other amounts due the state or federal government or any other  
128 political subdivision of this state;

129 (f) Any company requesting benefits for retained jobs that has filed for or  
130 has publicly announced its intention to file for bankruptcy protection. However,  
131 a company that has filed for or has publicly announced its intention to file for  
132 bankruptcy may be a qualified company provided that such company:

133 a. Certifies to the department that it plans to reorganize and not to  
134 liquidate; and

135 b. After its bankruptcy petition has been filed, it produces proof, in a form  
136 and at times satisfactory to the department, that it is not delinquent in filing any  
137 tax returns or making any payment due to the state of Missouri, including but  
138 not limited to all tax payments due after the filing of the bankruptcy petition and  
139 under the terms of the plan of reorganization. Any taxpayer who is awarded  
140 benefits under this subsection and who files for bankruptcy under Chapter 7 of  
141 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the  
142 department and shall forfeit such benefits and shall repay the state an amount  
143 equal to any state tax credits already redeemed and any withholding taxes  
144 already retained;

145 (g) Educational services (NAICS sector 61);

146 (h) Religious organizations (NAICS industry group 8131);

147 (i) Public administration (NAICS sector 92);

148 (j) Ethanol distillation or production;

149 (k) Biodiesel production; or

150 (l) Health care and social services (NAICS sector 62). Notwithstanding  
151 any provision of this section to the contrary, the headquarters, administrative  
152 offices, or research and development facilities of an otherwise excluded business  
153 may qualify for benefits if the offices or facilities serve a multistate territory. In  
154 the event a national, state, or regional headquarters operation is not the  
155 predominant activity of a project facility, the jobs and investment of such  
156 operation shall be considered eligible for benefits under this section if the other  
157 requirements are satisfied;

158 (24) "Related company", shall mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2 Department of Defense if:**

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

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

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

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

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

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

23 4. If the United States Department of Defense is a co-applicant  
24 for benefits as described in this section, the United States Department  
25 of Defense shall remit withholding taxes for new jobs as provided for  
26 by sections 143.191 to 143.265, but the department shall then pay the  
27 industrial development corporation or the Missouri development  
28 finance board, as applicable, an amount equal to the amount that the  
29 qualified company would have otherwise retained or received under  
30 section 620.2010, including any tax credits.

31 5. If an industrial development corporation or the Missouri  
32 development finance board receives an incentive payment under this

33 **section or proceeds from tax credit refunds or transfers under this**  
34 **section, it shall deposit such payment in a separate fund and shall not**  
35 **use such moneys for any purpose other than payment of expenses**  
36 **associated with the project facility.**

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