

FIRST REGULAR SESSION

SENATE BILL NO. 10

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0517S.01I

AN ACT

To repeal sections 620.2005 and 620.2010, RSMo, and to enact in lieu thereof two new sections relating to financial incentives for job creation.

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

Section A. Sections 620.2005 and 620.2010, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 620.2005 and
3 620.2010, to read as follows:

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

3 (1) "Area of distress", an area that is all of the following as
4 determined by the director:

5 (a) An area of pervasive poverty, unemployment, and general
6 distress;

7 (b) At least sixty-five percent of the residents living in the area
8 have incomes below eighty percent of the median income of all
9 residents within the state of Missouri according to the United States
10 Census Bureau's American Community Survey, based on the most
11 recent of five-year period estimate data in which the final year of the
12 estimate ends in either zero or five or other appropriate source as
13 approved by the director;

14 (c) The level of unemployment of persons, according to the most
15 recent data available from the division of employment security or from
16 the United States Bureau of Census and approved by the director,
17 within the area exceeds one and one-half times the average rate of
18 unemployment for the state of Missouri over the previous twelve

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

19 **months, or the percentage of area residents employed on a full-time**
20 **basis is less than fifty percent of the statewide percentage of residents**
21 **employed on a full-time basis;**

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

24 [(2)] (3) "Commencement of operations", the starting date for the
25 qualified company's first new employee, which shall be no later than twelve
26 months from the date of the approval;

27 [(3)] (4) "County average wage", the average wages in each county as
28 determined by the department for the most recently completed full calendar
29 year. However, if the computed county average wage is above the statewide
30 average wage, the statewide average wage shall be deemed the county average
31 wage for such county for the purpose of determining eligibility. The department
32 shall publish the county average wage for each county at least
33 annually. Notwithstanding the provisions of this subdivision to the contrary, for
34 any qualified company that in conjunction with their project is relocating
35 employees from a Missouri county with a higher county average wage, the
36 company shall obtain the endorsement of the governing body of the community
37 from which jobs are being relocated or the county average wage for their project
38 shall be the county average wage for the county from which the employees are
39 being relocated;

40 [(4)] (5) "Department", the Missouri department of economic
41 development;

42 [(5)] (6) "Director", the director of the department of economic
43 development;

44 [(6)] (7) "Employee", a person employed by a qualified company,
45 excluding:

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

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

50 [(7)] (8) "Existing Missouri business", a qualified company that, for the
51 ten-year period preceding submission of a notice of intent to the department, had
52 a physical location in Missouri and full-time employees who routinely perform job
53 duties within Missouri;

54 [(8)] (9) "Full-time employee", an employee of the qualified company that

55 is scheduled to work an average of at least thirty-five hours per week for a
56 twelve-month period, and one for which the qualified company offers health
57 insurance and pays at least fifty percent of such insurance premiums. An
58 employee that spends less than fifty percent of the employee's work time at the
59 facility shall be considered to be located at a facility if the employee receives his
60 or her directions and control from that facility, is on the facility's payroll, one
61 hundred percent of the employee's income from such employment is Missouri
62 income, and the employee is paid at or above the applicable percentage of the
63 county average wage;

64 [(9)] **(10)** "Local incentives", the present value of the dollar amount of
65 direct benefit received by a qualified company for a project facility from one or
66 more local political subdivisions, but this term shall not include loans or other
67 funds provided to the qualified company that shall be repaid by the qualified
68 company to the political subdivision;

69 [(10)] **(11)** "NAICS" or "NAICS industry classification", the classification
70 provided by the most recent edition of the North American Industry Classification
71 System as prepared by the Executive Office of the President, Office of
72 Management and Budget;

73 [(11)] **(12)** "New capital investment", shall include costs incurred by the
74 qualified company at the project facility after acceptance by the qualified
75 company of the proposal for benefits from the department or the approval notice
76 of intent, whichever occurs first, for real or personal property, and may include
77 the value of finance or capital leases for real or personal property for the term of
78 such lease at the project facility executed after acceptance by the qualified
79 company of the proposal for benefits from the department or the approval of the
80 notice of intent;

81 [(12)] **(13)** "New direct local revenue", the present value of the dollar
82 amount of direct net new tax revenues of the local political subdivisions likely to
83 be produced by the project over a ten-year period as calculated by the
84 department, excluding local earnings tax, and net new utility revenues, provided
85 the local incentives include a discount or other direct incentives from utilities
86 owned or operated by the political subdivision;

87 [(13)] **(14)** "New job", the number of full-time employees located at the
88 project facility that exceeds the project facility base employment less any decrease
89 in the number of full-time employees at related facilities below the related facility
90 base employment. No job that was created prior to the date of the notice of intent

91 shall be deemed a new job;

92 [(14)] **(15)** "New payroll", the amount of wages paid for all new jobs,
93 located at the project facility during the qualified company's tax year that exceeds
94 the project facility base payroll;

95 [(15)] **(16)** "Notice of intent", a form developed by the department and
96 available online, completed by the qualified company, and submitted to the
97 department stating the qualified company's intent to request benefits under this
98 program;

99 [(16)] **(17)** "Percent of local incentives", the amount of local incentives
100 divided by the amount of new direct local revenue;

101 [(17)] **(18)** "Program", the Missouri works program established in
102 sections 620.2000 to 620.2020;

103 [(18)] **(19)** "Project facility", the building or buildings used by a qualified
104 company at which new or retained jobs and any new capital investment are or
105 will be located. A project facility may include separate buildings located within
106 sixty miles of each other such that their purpose and operations are interrelated;
107 provided that where the buildings making up the project facility are not located
108 within the same county, the average wage of the new payroll shall exceed the
109 applicable percentage of the highest county average wage among the counties in
110 which the buildings are located. Upon approval by the department, a subsequent
111 project facility may be designated if the qualified company demonstrates a need
112 to relocate to the subsequent project facility at any time during the project period;

113 [(19)] **(20)** "Project facility base employment", the greater of the number
114 of full-time employees located at the project facility on the date of the notice of
115 intent or, for the twelve-month period prior to the date of the notice of intent, the
116 average number of full-time employees located at the project facility. In the event
117 the project facility has not been in operation for a full twelve-month period, the
118 average number of full-time employees for the number of months the project
119 facility has been in operation prior to the date of the notice of intent;

120 [(20)] **(21)** "Project facility base payroll", the annualized payroll for the
121 project facility base employment or the total amount of wages paid by the
122 qualified company to full-time employees of the qualified company located at the
123 project facility in the twelve months prior to the notice of intent. For purposes
124 of calculating the benefits under this program, the amount of base payroll shall
125 increase each year based on an appropriate measure, as determined by the
126 department;

127 [(21)] **(22)** "Project period", the time period within which benefits are
128 awarded to a qualified company or within which the qualified company is
129 obligated to perform under an agreement with the department, whichever is
130 greater;

131 [(22)] **(23)** "Projected net fiscal benefit", the total fiscal benefit to the
132 state less any state benefits offered to the qualified company, as determined by
133 the department;

134 [(23)] **(24)** "Qualified company", a firm, partnership, joint venture,
135 association, private or public corporation whether organized for profit or not, or
136 headquarters of such entity registered to do business in Missouri that is the
137 owner or operator of a project facility, certifies that it offers health insurance to
138 all full-time employees of all facilities located in this state, and certifies that it
139 pays at least fifty percent of such insurance premiums. For the purposes of
140 sections 620.2000 to 620.2020, the term "qualified company" shall not include:

- 141 (a) Gambling establishments (NAICS industry group 7132);
- 142 (b) Store front consumer-based retail trade establishments (under NAICS
143 sectors 44 and 45), except with respect to any company headquartered in this
144 state with a majority of its full-time employees engaged in operations not within
145 the NAICS codes specified in this subdivision;
- 146 (c) Food and drinking places (NAICS subsector 722);
- 147 (d) Public utilities (NAICS 221 including water and sewer services);
- 148 (e) Any company that is delinquent in the payment of any nonprotested
149 taxes or any other amounts due the state or federal government or any other
150 political subdivision of this state;
- 151 (f) Any company requesting benefits for retained jobs that has filed for or
152 has publicly announced its intention to file for bankruptcy protection. However,
153 a company that has filed for or has publicly announced its intention to file for
154 bankruptcy may be a qualified company provided that such company:
 - 155 a. Certifies to the department that it plans to reorganize and not to
156 liquidate; and
 - 157 b. After its bankruptcy petition has been filed, it produces proof, in a form
158 and at times satisfactory to the department, that it is not delinquent in filing any
159 tax returns or making any payment due to the state of Missouri, including but
160 not limited to all tax payments due after the filing of the bankruptcy petition and
161 under the terms of the plan of reorganization. Any taxpayer who is awarded
162 benefits under this subsection and who files for bankruptcy under Chapter 7 of

163 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the
164 department and shall forfeit such benefits and shall repay the state an amount
165 equal to any state tax credits already redeemed and any withholding taxes
166 already retained;

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

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

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

170 (j) Ethanol distillation or production;

171 (k) Biodiesel production; or

172 (l) Health care and social services (NAICS sector 62).

173 Notwithstanding any provision of this section to the contrary, the headquarters,
174 administrative offices, or research and development facilities of an otherwise
175 excluded business may qualify for benefits if the offices or facilities serve a
176 multistate territory. In the event a national, state, or regional headquarters
177 operation is not the predominant activity of a project facility, the jobs and
178 investment of such operation shall be considered eligible for benefits under this
179 section if the other requirements are satisfied;

180 [(24)] **(25)** "Related company", shall mean:

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

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

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

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

192 b. Ownership of at least fifty percent of the capital or profits interest in
193 such qualified company if it is a partnership or association;

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

198 [(25)] **(26)** "Related facility", a facility operated by the qualified company

199 or a related company located in this state that is directly related to the operations
200 of the project facility or in which operations substantially similar to the
201 operations of the project facility are performed;

202 [(26)] **(27)** "Related facility base employment", the greater of the number
203 of full-time employees located at all related facilities on the date of the notice of
204 intent or, for the twelve-month period prior to the date of the notice of intent, the
205 average number of full-time employees located at all related facilities of the
206 qualified company or a related company located in this state;

207 [(27)] **(28)** "Related facility base payroll", the annualized payroll of the
208 related facility base payroll or the total amount of taxable wages paid by the
209 qualified company to full-time employees of the qualified company located at a
210 related facility in the twelve months prior to the filing of the notice of intent. For
211 purposes of calculating the benefits under this program, the amount of related
212 facility base payroll shall increase each year based on an appropriate measure,
213 as determined by the department;

214 [(28)] **(29)** "Rural area", a county in Missouri with a population less than
215 seventy-five thousand or that does not contain an individual city with a
216 population greater than fifty thousand according to the most recent federal
217 decennial census;

218 [(29)] **(30)** "Tax credits", tax credits issued by the department to offset
219 the state taxes imposed by chapters 143 and 148, or which may be sold or
220 refunded as provided for in this program;

221 [(30)] **(31)** "Withholding tax", the state tax imposed by sections 143.191
222 to 143.265. For purposes of this program, the withholding tax shall be computed
223 using a schedule as determined by the department based on average wages; [and

224 (31)]

225 This section is subject to the provisions of section 196.1127.

620.2010. 1. In exchange for the consideration provided by the new tax
2 revenues and other economic stimuli that will be generated by the new jobs
3 created, a qualified company may, for a period of five years from the date the new
4 jobs are created, or for a period of six years from the date the new jobs are
5 created if the qualified company is an existing Missouri business, retain an
6 amount equal to the withholding tax as calculated under subdivision (30) of
7 section 620.2005 from the new jobs that would otherwise be withheld and
8 remitted by the qualified company under the provisions of sections 143.191 to
9 143.265 if:

10 (1) The qualified company creates ten or more new jobs, and the average
11 wage of the new payroll equals or exceeds ninety percent of the county average
12 wage;

13 (2) The qualified company creates two or more new jobs at a project
14 facility located in a rural area, the average wage of the new payroll equals or
15 exceeds ninety percent of the county average wage, and the qualified company
16 commits to making at least one hundred thousand dollars of new capital
17 investment at the project facility within two years; [or]

18 (3) The qualified company creates two or more new jobs at a project
19 facility located within a zone designated under sections 135.950 to 135.963, the
20 average wage of the new payroll equals or exceeds eighty percent of the county
21 average wage, and the qualified company commits to making at least one hundred
22 thousand dollars in new capital investment at the project facility within two years
23 of approval; **or**

24 **(4) The qualified company creates two or more new jobs at a**
25 **project facility located in an area of distress and the average wage of**
26 **the new payroll equals or exceeds eighty percent of the county average**
27 **wage of the county in which the project facility is located.**

28 2. In addition to any benefits available under subsection 1 of this section,
29 the department may award a qualified company that satisfies subdivision (1) of
30 subsection 1 of this section additional tax credits, issued each year for a period
31 of five years from the date the new jobs are created, or for a period of six years
32 from the date the new jobs are created if the qualified company is an existing
33 Missouri business, in an amount equal to or less than six percent of new payroll;
34 provided that in no event may the total amount of benefits awarded to a qualified
35 company under this section exceed nine percent of new payroll in any calendar
36 year. The amount of tax credits awarded to a qualified company under this
37 subsection shall not exceed the projected net fiscal benefit to the state, as
38 determined by the department, and shall not exceed the least amount necessary
39 to obtain the qualified company's commitment to initiate the project. In
40 determining the amount of tax credits to award to a qualified company under this
41 subsection, the department shall consider the following factors:

42 (1) The significance of the qualified company's need for program benefits;

43 (2) The amount of projected net fiscal benefit to the state of the project
44 and the period in which the state would realize such net fiscal benefit;

45 (3) The overall size and quality of the proposed project, including the

46 number of new jobs, new capital investment, proposed wages, growth potential of
47 the qualified company, the potential multiplier effect of the project, and similar
48 factors;

49 (4) The financial stability and creditworthiness of the qualified company;

50 (5) The level of economic distress in the area;

51 (6) An evaluation of the competitiveness of alternative locations for the
52 project facility, as applicable; and

53 (7) The percent of local incentives committed.

54 3. Upon approval of a notice of intent to receive tax credits under
55 subsections 2 and 5 of this section, the department and the qualified company
56 shall enter into a written agreement covering the applicable project period. The
57 agreement shall specify, at a minimum:

58 (1) The committed number of new jobs, new payroll, and new capital
59 investment for each year during the project period;

60 (2) The date or time period during which the tax credits shall be issued,
61 which may be immediately or over a period not to exceed two years from the date
62 of approval of the notice of intent;

63 (3) Clawback provisions, as may be required by the department; and

64 (4) Any other provisions the department may require.

65 4. In lieu of the benefits available under sections 1 and 2 of this section,
66 and in exchange for the consideration provided by the new tax revenues and other
67 economic stimuli that will be generated by the new jobs created by the program,
68 a qualified company may, for a period of five years from the date the new jobs are
69 created, or for a period of six years from the date the new jobs are created if the
70 qualified company is an existing Missouri business, retain an amount equal to the
71 withholding tax as calculated under subdivision (30) of section 620.2005 from the
72 new jobs that would otherwise be withheld and remitted by the qualified company
73 under the provisions of sections 143.191 to 143.265 equal to:

74 (1) Six percent of new payroll for a period of five years from the date the
75 required number of new jobs were created if the qualified company creates one
76 hundred or more new jobs and the average wage of the new payroll equals or
77 exceeds one hundred twenty percent of the county average wage of the county in
78 which the project facility is located; or

79 (2) Seven percent of new payroll for a period of five years from the date
80 the required number of jobs were created if the qualified company creates one
81 hundred or more new jobs and the average wage of the new payroll equals or

82 exceeds one hundred forty percent of the county average wage of the county in
83 which the project facility is located.

84 The department shall issue a refundable tax credit for any difference between the
85 amount of benefit allowed under this subsection and the amount of withholding
86 tax retained by the company, in the event the withholding tax is not sufficient to
87 provide the entire amount of benefit due to the qualified company under this
88 subsection.

89 5. In addition to the benefits available under subsection 4 of this section,
90 the department may award a qualified company that satisfies the provisions of
91 subsection 4 of this section additional tax credits, issued each year for a period
92 of five years from the date the new jobs are created, or for a period of six years
93 from the date the new jobs are created if the qualified company is an existing
94 Missouri business, in an amount equal to or less than three percent of new
95 payroll; provided that in no event may the total amount of benefits awarded to
96 a qualified company under this section exceed nine percent of new payroll in any
97 calendar year. The amount of tax credits awarded to a qualified company under
98 this subsection shall not exceed the projected net fiscal benefit to the state, as
99 determined by the department, and shall not exceed the least amount necessary
100 to obtain the qualified company's commitment to initiate the project. In
101 determining the amount of tax credits to award to a qualified company under this
102 subsection, the department shall consider the factors provided under subsection
103 2 of this section.

104 6. No benefits shall be available under this section for any qualified
105 company that has performed significant, project-specific site work at the project
106 facility, purchased machinery or equipment related to the project, or has publicly
107 announced its intention to make new capital investment at the project facility
108 prior to receipt of a proposal for benefits under this section or approval of its
109 notice of intent, whichever occurs first.

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