

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 477

AN ACT

To amend chapter 620, RSMo, by adding thereto eight new sections relating to rural workforce development incentives.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Chapter 620, RSMo, is amended by adding thereto eight new sections, to be known as sections 620.3500, 620.3505, 620.3510, 620.3515, 620.3520, 620.3525, 620.3530, and 620.3531, to read as follows:

620.3500. Sections 620.3500 to 620.3530 shall be known and may be cited as the "Missouri Rural Workforce Development Act".

620.3505. As used in sections 620.3500 to 620.3530, the following terms shall mean:

(1) "Affiliate", an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another entity. An entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or has control over day-to-day operations of the controlled entity by contract or by law;

(2) "Applicable percentage", zero percent for the first two credit allowance dates, and fifteen percent for the next four credit allowance dates;

(3) "Capital investment", any equity investment in a rural fund by a rural investor which:

(a) Is acquired after the effective date of sections 620.3500 to 620.3530 at its original issuance solely in exchange for cash;

(b) Has one hundred percent of its cash purchase price used by the rural fund to make qualified investments in eligible businesses located in this state by the third anniversary of the initial credit allowance date; and

(c) Is designated by the rural fund as a capital investment under sections 620.3500 to 620.3530 and is certified by the department under the provisions of section 620.3510. This shall include any capital investment that does not meet the provisions of subdivision (1) of subsection 1 of section 620.3510 if such investment was a capital investment in the hands of a prior holder;

(4) "Credit allowance date", the date on which the department certifies a rural fund's capital investment and each of the five anniversary dates of such date thereafter;

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

(6) "Eligible business", a business that, at the time of the initial qualified investment in the business:

(a) Has fewer than two hundred fifty employees; and

(b) Has its principal business operations in one or more rural areas in this state.

Any business which is classified as an eligible business at the time of the initial investment in such business by a rural fund shall remain classified as an eligible business and may receive follow-on investments from any rural fund, and such follow-on investments shall be qualified investments even though such business may not meet the definition of an eligible business at the time of such follow-on investments;

(7) "Full-time job", a job in this state that is:

(a) Performed by an employee of an eligible business and requires thirty-five hours of work or more per week;

(b) Contracted out by an eligible business to perform work equivalent of a full-time employee of an eligible business; or

(c) A part-time equivalent;

(8) "Jobs created", the number of full-time jobs added by an eligible business during each twelve-month period following the date of a rural fund's initial qualified investment; provided, however, that if the number calculated is less than zero, such number shall be reported as zero;

(9) "Jobs retained", any full-time jobs that existed at an eligible business prior to a rural fund's initial qualified investment that are retained by an eligible business following a rural fund's initial qualified investment, calculated annually. The reported number of jobs retained for a year shall only include full-time jobs that would have been lost or moved out of this state had the qualified investment not been made, as certified in writing by affidavit by an executive officer of the eligible business, and may not exceed the number reported on the initial report under section 620.3530;

(10) "Part-time equivalent", the number of part-time employees working less than thirty-five hours per week employed by an eligible business equivalent to one full-time job, calculated by taking the weekly average hours worked by part-time employees for a week aggregated to determine the number of full-time equivalent jobs;

(11) "Principal business operations", the location where at least sixty percent of a business's employees work or where employees who are paid at least sixty percent of such business's payroll work. A business that has agreed to relocate employees using the proceeds of a qualified investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in such new location if it satisfied the requirements of this subdivision no later than one hundred eighty days after receiving a qualified investment;

(12) "Purchase price", the amount paid to the rural fund that issues a capital investment which shall not exceed the amount of capital investment authority certified under the provisions of section 620.3510;

(13) "Qualified investment", any investment in an eligible business or any loan to an eligible business with a stated maturity date of at least one year after the date of issuance, not including investment in the form of revolving lines of credit and senior secured debt unless the eligible business has a credit refusal letter or similar correspondence from a depository institution or a referral letter or similar correspondence from a depository institution referring the business to a rural fund; provided that, with respect to any one eligible business, the

maximum amount of investments made in such business by one or more rural funds, on a collective basis with all of the businesses' affiliates, with the proceeds of capital investments shall be the greater of twenty percent of the rural fund's capital investment authority or six million five hundred thousand dollars, exclusive of investments made with repaid or redeemed investments or interest or profits realized thereon;

(14) "Rural area", any county of this state that has a population of less than ninety thousand according to the 2010 decennial census of the United States;

(15) "Rural fund", an entity certified by the department under the provisions of section 620.3510;

(16) "Rural investor", an entity that makes a capital investment in a rural fund;

(17) "State tax liability", any liability incurred by any entity subject to the state income tax imposed under chapter 143, excluding withholding tax imposed under sections 143.191 to 143.265, or an insurance company paying an annual tax on its gross premium receipts, including retaliatory tax, or other financial institution paying taxes to the state or any political subdivision of the state under the provisions of chapter 148, or an express company which pays an annual tax on its gross receipts in this state.

620.3510. 1. A rural fund that seeks to have an equity investment certified as a capital investment eligible for credits authorized under the provisions of sections 620.3500 to 620.3530 shall apply to the department. The department shall begin accepting applications within ninety days of the effective date

of sections 620.3500 to 620.3530. The application shall include:

(1) The amount of capital investment requested;

(2) A copy of the applicant's or an affiliate of the applicant's license as a rural business investment company under 7 U.S.C. Section 2009cc or as a small business investment company under 15 U.S.C. Section 681, and a certificate executed by an executive officer of the applicant attesting that such license remains in effect and has not been revoked;

(3) Evidence that, as of the date the application is submitted, the applicant or affiliates of the applicant have invested at least one hundred million dollars in nonpublic companies located in counties within the United States with a population of less than fifty thousand according to the 2010 decennial census of United States;

(4) A business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant's proposed qualified investments, prepared by a nationally recognized, third-party, independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the ten years following the date the application is submitted to the department. Such plan shall include an estimate of the number of jobs created and jobs retained in this state as a result of the applicant's qualified investments; and

(5) A nonrefundable application fee of five thousand dollars payable to the department.

2. Within thirty days after the receipt of a completed application, the department shall grant or deny the application

in full or in part. The department shall deny the application if:

(1) The applicant does not satisfy all of the criteria provided under subsection 1 of this section;

(2) The revenue impact assessment submitted with the application does not demonstrate that the applicant's business plan will result in a positive fiscal impact on this state over a ten year period that exceeds the cumulative amount of tax credits that would be issued to the applicant if the application were approved; or

(3) The department has already approved the maximum amount of capital investment authority under section 620.3515.

3. If the department denies any part of the application, it shall inform the applicant of the grounds for such denial. If the applicant provides any additional information required by the department or otherwise completes its application within fifteen days of the notice of denial, the application shall be considered complete as of the original date of submission. If the applicant fails to provide the information or fails to complete its application within the fifteen-day period, the application shall remain denied and shall be resubmitted in full with a new submission date and a new application fee.

4. Upon approval of an application, the department shall certify the proposed equity investment as a capital investment eligible for credits under sections 620.3500 to 620.3530, subject to the limitations contained in section 620.3515. The department shall provide written notice of the certification to the rural fund and include the aggregate number of jobs created and jobs

retained required of the rural fund with such amount set forth in the rural fund's business plan prorated based on the amount of capital investment actually certified to the rural fund by the department. The department shall certify capital investments in the order that the applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications that are complete and received on the same day, the department shall certify applications in proportionate percentages based upon the ratio of the amount of capital investment authority requested in an application to the total amount of capital investment authority requested in all applications.

620.3515. 1. The department may certify capital investment authority under the provisions of sections 620.3500 to 620.3530 in amounts that would authorize not more than twenty-five million dollars in state tax credits to be claimed against state tax liability in any calendar year, excluding any credit amounts carried forward as provided under subsection 1 of section 620.3520. Within ninety days of the applicant receiving notice of certification, the rural fund shall issue the capital investment to, and receive cash in the amount of the certified amount from, a rural investor. At least ten percent of the rural investor's capital investment shall be composed of capital raised by the rural investor from sources, including directors, members, employees, officers, and affiliates of the rural investor, other than the amount invested by the allocatee claiming the tax credits in exchange for such allocation of tax credits. The rural fund shall provide the department with evidence of the

receipt of the cash investment within ninety-five days of the applicant receiving notice of certification.

2. If the rural fund does not receive the cash investment and issue the capital investment within such time period following receipt of the certification notice, the certification shall lapse and the rural fund shall not issue the capital investment without reapplying to the department for certification. Lapsed certifications shall revert to the department and shall be reissued pro rata to applicants whose capital investment allocations were reduced in accordance with the application process provided under subdivision (4) of subsection 3 of section 620.3520.

3. A rural fund, before making a qualified investment, may request from the department a written opinion as to whether the business in which it proposes to invest is an eligible business. The department, not later than the fifteenth business day after the date of receipt of such request, shall notify the rural fund of its determination. If the department fails to notify the rural fund of its determination by the twentieth business day, the business in which the rural fund proposes to invest shall be deemed an eligible business.

620.3520. 1. Upon making a capital investment in a rural fund, a rural investor shall have a vested right to a credit against such entity's state tax liability that may be utilized on each credit allowance date of such capital investment in an amount equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the rural fund for the capital investment. The amount of the credit

claimed by a rural investor shall not exceed the amount of such entity's state tax liability for the tax year for which the credit is claimed. Any amount of credit that a rural investor is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any of the five subsequent taxable years, and shall not be carried back to prior taxable years.

2. No credit claimed under the provisions of sections 620.3500 to 620.3530 shall be refundable. Credits earned by or allocated to a partnership, limited liability company, or S-corporation may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders, and a rural fund shall notify the department of the names of the entities that are eligible to utilize credits pursuant to an allocation of credits or a change in allocation of credits, or due to a transfer of a capital investment upon such allocation, change, or transfer. Such allocation shall not be considered a sale for the purposes of this section.

3. The department may recapture credits from a rural investor that claimed a credit authorized under this section if:

(1) The rural fund does not invest sixty percent of its capital investment authority in qualified investments in this state within two years of the credit allowance date, and one hundred percent of its capital investment authority in qualified investments in this state within three years of the credit allowance date;

(2) The rural fund fails to maintain qualified investments equal to ninety percent of its capital investment authority from the third anniversary until the sixth anniversary of the credit allowance date. For each year the rural fund fails to maintain such investments, the department may recapture an amount of such year's allowed credits equal to the percentage difference between ninety percent of a rural fund's capital investment authority and the actual amount of qualified investments maintained for such year. For the purposes of this subdivision, a qualified investment is considered maintained even if the qualified investment was sold or repaid so long as the rural fund reinvests an amount equal to the capital returned or recovered by the rural fund from the original investment, exclusive of any profits realized, in other qualified investments in this state within twelve months of the receipt of such capital. Amounts received periodically by a rural fund shall be treated as continually invested in qualified investments if the amounts are reinvested in one or more qualified investments by the end of the following calendar year. A rural fund shall not be required to reinvest capital returned from qualified investments after the fifth anniversary of the credit allowance date, and such qualified investments shall be considered held continuously by the rural fund through the sixth anniversary of the credit allowance date;

(3) The rural fund, before exiting the program in accordance with sections 620.3500 to 620.3530, makes a distribution or payment that results in the rural fund having less than ninety percent of its capital investment authority invested in qualified investments in this state; or

(4) The rural fund violates the provisions of section 620.3525, in which case the department may recapture an amount equal to the amount of a rural fund's capital investment authority found to be in violation of such provisions.

For the purposes of meeting and maintaining the objectives established for investment in subdivisions (1) and (2) of this subsection, a rural fund's qualified investments shall be multiplied by a factor of one and a quarter in counties with less than thirty thousand in population and more than thirteen thousand in population and shall be multiplied by a factor of one and a half in counties with a population of thirteen thousand or less.

4. Recaptured credits and the related capital investment authority shall revert to the department and shall be reissued pro rata to applicants whose capital investment allocations were reduced in accordance with the application process provided under subsection 4 of section 620.3510.

5. No recapture shall occur until the rural fund has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

620.3525. No eligible business that receives a qualified investment under the provisions of sections 620.3500 to 620.3530, or any affiliates of such eligible businesses, shall directly or indirectly:

(1) Own or have the right to acquire an ownership interest in a rural fund or member or affiliate of a rural fund, including, but not limited to, a holder of a capital investment

issued by the rural fund; or

(2) Loan to or invest in a rural fund or member or affiliate of a rural fund, including, but not limited to, a holder of a capital investment issued by a rural fund, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of a capital investment under sections 620.3500 to 620.3530.

620.3530. 1. Rural funds shall submit a report to the department within the first fifteen business days after the third anniversary of the initial credit allowance date that provides documentation as to the investment of one hundred percent of the purchase price of such capital investment in qualified investments. Such report shall include:

(1) The name and location of each eligible business receiving a qualified investment;

(2) Bank statements of such rural fund evidencing each qualified investment;

(3) A copy of the written opinion of the department, as provided in subsection 3 of section 620.3515, or evidence that such business was an eligible business at the time of such qualified investment, as applicable;

(4) The number of jobs created and jobs retained as a result of qualified investments as of the first, second and third anniversaries of the initial credit allowance date;

(5) The average annual salary of the jobs created and retained as a result of qualified investments; and

(6) Such other information as required by the department.

2. For all subsequent years, rural funds shall submit an

annual report to the department within ninety days of the beginning of the calendar year during the compliance period. The report shall include, but is not limited to, the following:

(1) The number of jobs created and jobs retained as a result of qualified investments;

(2) The average annual salary of the jobs created and retained as a result of qualified investments; and

(3) Such other information as required by the department.

3. If at any time on or after the sixth anniversary of the credit allowance date a rural fund satisfies the jobs created and jobs retained amounts required in such fund's notice of certification as provided under subsection 4 of section 620.3510, then such rural fund shall no longer be subject to regulation under the provisions of sections 620.3500 to 620.3530 and may exit the program by providing written notice to the department certifying such rural fund has met its requirements and will be exiting the program.

4. A rural fund not meeting the job requirements may apply to the department to exit the program and no longer be subject to the regulation under the provisions of sections 620.3500 to 620.3530 by paying the penalties provided under subsection 5 of this section, as applicable. The department shall respond to the exit application within fifteen days of receipt. In evaluating the exit application, the fact that no credits have been recaptured and that the rural fund has not received a notice of recapture that has not been cured pursuant to subsection 5 of section 620.3520 shall be sufficient evidence to prove that the rural fund is eligible for exit. The department shall not

unreasonably deny an exit application submitted under this subsection. If the exit application is denied, the notice shall include the reasons for such determination.

5. (1) A rural fund is subject to a penalty in the amount provided under subdivision (2) of this subsection if:

(a) The rural fund authorizes a distribution to the rural fund's equity holders in an amount that, when added to all previous distributions to the rural fund's equity holders and any previous penalties under this section, exceeds the rural fund's capital investment authority; and

(b) The number of jobs created and jobs retained as a result of the rural fund's qualified investments, as reported on the rural fund's reports, is less than the number of jobs created and jobs retained included in such rural fund's notice of certification as provided under subsection 4 of section 620.3510.

(2) The amount of the penalty shall be equal to the amount of the distribution or fee paid by the rural fund that exceeds the rural fund's capital investment authority and multiplying such excess amount by a fraction:

(a) The numerator of which is the number of jobs created and jobs retained included in the rural fund's notice of certification as provided under subsection 4 of section 620.3510, less the number of jobs created and jobs retained reported in all of the rural fund's reports submitted pursuant to this section; and

(b) The denominator of which is the number of jobs created and jobs retained included in such rural fund's notice of certification as provided under subsection 4 of section 620.3510.

At the time of exit, before making a distribution to the rural fund's equity holders or payment of any fees, the rural fund shall deduct the amount of the penalty from the equity distribution or fee and pay such penalty to the department.

620.3531. Notwithstanding the provisions of section 23.253 of the Missouri sunset act to the contrary:

(1) The provisions of the new program authorized under sections 620.3500 to 620.3530 shall automatically sunset ten years after the effective date of sections 620.3500 to 620.3530 unless reauthorized by an act of the general assembly;

(2) If such program is reauthorized, the program authorized under sections 620.3500 to 620.3530 shall automatically sunset ten years after the effective date of the reauthorization of sections 620.3500 to 620.3530; and

(3) Sections 620.3500 to 620.3530 shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 620.3500 to 620.3530 is sunset.